No. 44

IN THE

Supreme Court of the United States

OCTOBER TERM, 1947.

FRED Y. OYAMA AND KAJIRO OYAMA, *Petitioners,*

v.

STATE OF CALIFORNIA.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF CALIFORNIA

BRIEF FOR PETITIONERS

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OPINIONS BELOW

The findings of fact and conclusions of law in the Superior Court (R. 58-64) are not reported. The opinion in the Supreme Court of California (R. 102-120) is reported in 29 Advance California Reports 157; 173 P. (2d) 794.

JURISDICTION

The judgment of the Supreme Court of California was entered October 31, 1946 (R. 121). An order denying these

petitioners' petition for rehearing was entered November 25, 1946 (R. 120). Petition for a writ of certiorari was filed on February 25, 1947, and was granted on April 7, 1947. 330 U. S. 818. The jurisdiction of this Court rests upon Section 237(b) of the Judicial Code, as amended.

QUESTIONS PRESENTED

1. Whether the Alien Land Law, as applied in this case, deprives petitioner Fred Oyama, an American citizen, of the equal protection of the laws and of the privileges and immunities of a citizen, in violation of the Fourteenth Amendment to the Constitution.

2. Whether the Alien Land Law, as enforced and as applied in this case, deprives petitioner Kajiro Oyama, an alien of the Japanese race, of the equal protection of the laws, in violation of the Fourteenth Amendment to the Constitution.

3. Whether the decision of the Supreme Court of California, holding that no statute of limitations is applicable to actions for escheat under the Alien Land Law, is not a retroactive reopening of a vested title to real estate which also violates the Fourteenth Amendment.

STATUTES INVOLVED

The relevant provisions of the California Alien Land Law (Alien Property Initiative Act of 1920, Cal. Stats. (1921) p. lxxxiii), as amended, are set out in Appendix A, *infra*.

STATEMENT

On August 28, 1944, the State of California filed a petition under the California Alien Land Law to declare an escheat to the State of certain agricultural lands (R. 1). Fred Oyama, a minor and an American citizen (R. 59), and his father and guardian, Kajiro Oyama, an alien of the Japanese race (R. 58), who are now petitioners here, were named among several other defendants (R. 1). The petition alleged that the land in question consisted of two par-

cels. One was alleged to have been purchased on August 18, 1934, by Kajiro and Kohide Oyama, title being conveyed directly to Fred Oyama and a deed to that effect duly recorded (R. 2-3). The other was alleged to have been transferred to Fred Oyama on December 17, 1937, by an order of the Superior Court of San Diego County confirming the sale to Fred Oyama from the estate of June Kushino, a minor, and a certified copy of the order was duly recorded (R. 6). The petition prayed for an escheat as of the dates specified above (R. 7-8).

A demurrer having been filed (R. 18) and overruled (R. 51), the matter was tried upon the petition and answer (R. 53-55). At the trial, it was shown that on March 1, 1935, Kajiro Oyama petitioned the San Diego Superior Court to be appointed guardian of Fred Oyama, stating that the latter was his minor son and was the owner of the parcel of land conveyed in 1934. Subsequently he filed with the court a sworn Inventory and Appraisal, being a "true statement of all the estate of" his son Fred Oyama which described the property in question. No reference was made in this sworn statement to the holding of an interest in this land by anyone other than Fred Oyama nor was any such interest referred to by the two independent appraisers. On August 15, 1935 the father was appointed guardian by the court and filed the necessary bond. Subsequently, with permission of the court, Kajiro Oyama borrowed money upon and mortgaged the property as guardian for Fred Oyama (P. Exh. 1).[1] The Clerk of the San Diego Superior Court identified the guardianship records of Fred Oyama and June Kushino, and testified that no reports had been filed with his office on behalf of Fred Oyama under the Alien Land Law (R. 82-84).

The only other witness at the trial was John C. Kurfurst, who was left in charge of both parcels of property

[1] The exhibits are not included in the printed record, but are on file with the Clerk.

when petitioners, along with all other persons of Japanese origin and ancestry, were evacuated from the Pacific Coast (R. 84). He testified that the Oyamas were not occupying the property at that time but rather that it was being occupied by the Kushino family (R. 81-82). After the evacuation he rented the property. Kurfurst kept all the proceeds in his own bank account, making no payments to the owner of the land until a representative of the War Relocation Authority came to discuss the matter with him (R. 84-85). Thereafter he transmitted checks amounting to $16 and $330 to Fred Oyama covering certain of the rentals minus expenses in connection with the property which he himself incurred (R. 85). These checks were returned to Kurfurst endorsed "Fred Oyama" (R. 86; P. Exhs. 3, 4). No evidence was offered proving that the signature was by anyone other than Fred Oyama, the son. On June 7, 1944, Fred Oyama advised Kurfurst by letter that the property was being turned over to someone else to be managed (R. 87; P. Exh. 6).

Although on direct examination Kurfurst testified that he knew the father as "Fred Oyama", he stated that he had never heard the father refer to himself by that name (R. 87). Moreover, on cross-examination he testified that on one occasion he had heard the father say, "Some day the boy will have a good piece of property because that is going to be valuable" (R. 90). Also, Kurfurst stated that in a letter entitled "Re: Fred Yoshihiro Oyama and June Kushino" which he wrote to the War Relocation Authority regarding the property (D. Exh. A), he meant by "Fred Oyama" the boy, not the father (R. 91-92). Also, he understood a letter written by the War Relocation Authority to Kurfurst regarding "Fred Oyama" (D. Exh. B) to refer to the son and not the father (R. 92). Moreover, he admitted that he knew "that the father was running the boy's business" when he was in California and that "the property belonged to the boy and to June Kushino" (an American-born Japanese) (R. 94). Finally, the receipts

issued by the War Relocation Authority for the monies transmitted by Kurfurst (D. Exh. D) were for the account of Fred Oyama, not of Kajiro Oyama (R. 94-95).

The Decisions Below. The language in which the findings of the Superior Court are couched is substantially identical to that of the charges of the State (R. 1-8). In essence the Superior Court found that the two pieces of land were purchased by Kajiro Oyama and Kohide Oyama, the boy's mother; that, although the first parcel was deeded to Fred Oyama in 1934 and recorded in his name and the estate of June Kushino transferred the second parcel to Fred Oyama in a guardianship proceeding and the order of the court authorizing the transfer to Fred Oyama was recorded, the father and mother entered into possession of the property and used it as their own, and have had the beneficial use and enjoyment of the land. The Court also found that the father had not filed financial reports regarding the property under the Alien Land Law as guardian of Fred Oyama and that both transfers to Fred Oyama were subterfuges and frauds on the State. The court further found that these "acts" were done in an attempt to "prevent, evade and avoid" escheat and that the State was entitled to have the property declared escheated (R. 58-63).

The Supreme Court of California sustained the Superior Court principally on the basis of earlier decisions of this Court holding that the exclusion of "ineligible aliens" from having any interest in agricultural land is a proper exercise of the police power of the State. The court further held that Fred Oyama was denied no constitutional guarantees because the property passed to the State by virtue of deficiencies existing in the alien father, not the citizen son (R. 117). Finally, the trial court's findings of fact upon the basis of which the land was declared to escheat were found to be fully supported by the evidence *(ibid.)*. Two of the seven justices did not take part in the decision; one more concurred specially solely on the ground that the decisions of this Court "are controlling until such

time as they are reexamined and modified by that court" (R. 120). Judgment was entered on October 31, 1946, affirming the judgment of the Superior Court (R. 121).

A petition for rehearing was filed, and was denied on November 25, 1946 (R. 120), one judge voting for the rehearing. The petition for writ of certiorari was filed on February 25, 1947, and was granted on April 7, 1947. 330 U. S. 818.

SPECIFICATION OF ERRORS TO BE URGED

The Supreme Court of California erred:

1. In failing and refusing to hold that the California Alien Land Law of 1920, as amended, as applied in this case, deprives petitioner Fred Oyama of the equal protection of the laws and of the privileges and immunities of a citizen, in violation of Section 1 of the Fourteenth Amendment to the Constitution of the United States.

2. In failing and refusing to hold that the California Alien Land Law of 1920, as enforced and as applied in this case, deprives petitioner Kajiro Oyama of the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States.

3. In applying a statute by which California had removed any statute of limitations on escheat actions to an action brought subsequent to the date when the prior period of limitations had expired, in violation of the Fourteenth Amendment to the Constitution of the United States.

4. In affirming the decision of the Superior Court.

5. In failing and refusing to dismiss the petition of the State of California.

SUMMARY OF ARGUMENT

I.

The decision of the court below deprives petitioner Fred Oyama of the equal protection of the laws and the privileges and immunities of a citizen. In California minor children other than those of Japanese ancestry may receive gifts of real estate from their parents with no presumption that the transaction is illegal. The Alien Land Law as applied here requires Fred Oyama, solely because he is the son of a Japanese alien, to defend his gift against the claim of the State that he had never received genuine title and that instead the property had in reality gone to his parents and thence to the State.

Moreover, it is virtually impossible for Fred Oyama to defend his gift. The court below inferred that the transaction was colorable from the fact that the property was conveyed to the son. That makes it impossible for Fred Oyama ever to receive a gift of land from his parents; every act of the father to effectuate a proper transfer would be evidence of an improper transfer. So, too, is the effect of the statutory presumption that the conveyance was made with intent to "prevent, evade or avoid" escheat which came into effect merely upon proof that the father had paid for the land and the son was the transferee. This presumption is such, and is given such overwhelming evidentiary effect, that it establishes a substantive rule that a Japanese alien cannot make a bona fide gift of land to his son. As such it is unconstitutional. *Heiner* v. *Donnan*, 285 U. S. 312.

Nor may any inference of intention to violate the statute be drawn from the father's failure to file guardianship reports or to testify below. Sons of those other than Japanese aliens are not faced with the loss of their property because of the failure of their parents to perform such acts. Moreover, it is far from clear that the father was required, or may fairly have been expected to understand that he was required, to file such reports until 1943 when the father had

been evacuated from California and no longer had supervision of the son's land.

II.

The Alien Land Law is race legislation aimed directly at the Japanese and is in violation of the Fourteenth Amendment. Use of the term "aliens ineligible to citizenship" is merely a guise. The object of the law is "to discourage the coming of Japanese into the State". *Estate of Yano*, 188 Cal. 645, 658, 206 Pac. 995, 1001 (1922). Not only is the statute intended to apply solely to Japanese but it has had a consistent history of anti-Japanese enforcement. This is demonstrated by the escheat proceedings which have been filed by the State and the recorded cases involving the law. Although the phrase "ineligible to citizenship" in the Alien Land Law may imply more than racial ineligibility, no one has ever been barred from land ownership under it except for reasons of racial ineligibility. Moreover, the successive narrowing of the group "aliens ineligible to citizenship" by amendment of the federal naturalization laws has left the restriction on land ownership applicable in practice to but one racial group in California—the Japanese.

As an anti-Japanese law the Alien Land Law is in violation of the Fourteenth Amendment. Restrictions on the holding of land by aliens are anachronistic remnants of the Middle Ages originally based on the political relationships inherent in the feudal system. But the Alien Land Law has no basis even in such historical rationalization. It seeks to discriminate *among* aliens and to prevent one small group of them from approaching agricultural land except as day-laborers. The denial to them—on a race basis—of a fundamental right normally open to all meets neither the "clear and present public danger" test nor the "reasonable classification test". *Thomas v. Collins*, 323 U. S. 516, 527, 529-532; *Korematsu v. United States*, 323 U. S. 214, 216; *Buchanan v. Warley*, 245 U. S. 60, 74, 82. The use of the term "aliens ineligible to citizenship" is merely a veil

which this Court will pierce. *Yick Wo* v. *Hopkins*, 118 U. S. 356, 374.

III.

The Court below and the State of California rely on a series of companion cases decided by this Court in 1923, *Porterfield* v. *Webb*, 263 U. S. 225; *Webb* v. *O'Brien*, 263 U. S. 313; *Frick* v. *Webb*, 263 U. S. 326, and *Terrace* v. *Thompson*, 263 U. S. 197. These cases attempted to justify the California statute and a different Washington statute on the ground that aliens ineligible for citizenship constitute a class from whom the privilege of land ownership may be withheld. But the mere existence of distinguishing characteristics—whether they be of the Japanese class within the class or the purported broader "ineligible alien" class does not of itself support this discrimination. Nor is the authority of the State to discriminate in the ownership of land measured by the specific authority vested in Congress over naturalization. Equally unreasonable is the suggestion that the discrimination is justified because "one who is not a citizen and cannot become one lacks an interest in, and the power to effectively work for the welfare of, the state", and that, without the ban, "every foot of land within the state might pass to the ownership of non-citizens." *Terrace* v. *Thompson, supra*, 263 U. S. at pp. 220-222. Neither the characteristics nor the numbers of ineligible aliens bear out this suggestion. Eligibility for citizenship does not determine character or loyalty. Ex parte *Kawato*, 317 U. S. 69, 71; Ex. parte *Endo*, 323 U. S. 283, 302. There is no relationship between these purposes and ownership of agricultural land. Nor is the fear that all the land in the State might be owned by ineligible aliens consistent with good sense or the actual record of population trends and land holding in California.

Conditions have changed since the earlier cases. Successive modification of the naturalization laws have made the "ineligible alien" class practically synonymous with

"Japanese". Subsequent events have shown that the fears which generated and the policies which underlay the Alien Land Law had no reasonable basis. The almost exclusively anti-Japanese record of enforcement and the actual record of population and land holding in California and the other facts as to the origins and history of the law were not brought to the attention of the Court. A different constitutional answer is demanded in the light of the change in facts. *Nashville C. & St. L. R. R.* v. *Walters*, 294 U. S. 405, 415. Experience during the last war has shown that denying Japanese aliens the right to own land is unnecessary to protect the "safety" of the State. The federal government assumed complete control over Japanese aliens. If the State insists on relying on the discredited rationalization of State safety it necessarily admits that California has improperly invaded a field which is and should be the exclusive concern of the federal government. *Hines* v. *Davidowitz*, 312 U. S. 52, 64-66. This racially discriminatory law also conflicts with the pledge of the United States in the United Nations Charter to act to achieve "universal respect for, and observance of, human rights and fundamental freedom for all without distinction as to race, sex, language, or religion."

IV.

The Court below denied petitioners the protection of the California statute of limitations. Suit by the State with respect to at least one of the two tracts of land involved in this proceeding was barred by the statute of limitations when this action was begun and when the California legislature added to the Alien Land Law a provision stating that no statute of limitations should bar any escheat action commenced pursuant to its provisions. The lifting of the bar of the statute of limitations to deprive the petitioners or either of them of their land is unconstitutional. *Stewart* v. *Keyes*, 295 U. S. 403.

ARGUMENT

I

THE ALIEN LAND LAW, AS HERE CONSTRUED AND APPLIED, DEPRIVES FRED OYAMA, A CITIZEN, OF THE EQUAL PROTECTION OF THE LAWS AND OF THE PRIVILEGES AND IMMUNITIES OF A CITIZEN.

Fred Oyama, born in California in 1928, is an American citizen (R. 59). In 1934, he received the title to certain agricultural land in California, and in 1937 received the title to an additional tract of similar land (R. 6, 60, 62). The consideration for the land in each instance was paid by his parents (R. 60, 62), who were aliens, born in Japan (R. 58). Now, by an escheat proceeding, it is claimed that this property may be taken from Fred Oyama by the State of California. The circumstances are such that it is abundantly clear—indeed it will no doubt be admitted—that if Fred Oyama's parents had been German aliens, or British aliens, instead of Japanese aliens, Fred would still have his land. We believe it plain that the statute, as thus construed, discriminates against Fred Oyama solely because of his racial origin. As such, we believe, it offends the equal protection and privileges and immunities clauses in Section 1 of the Fourteenth Amendment. By the same token, it is even more clearly in conflict with the specific provision of Section 42 of Title 8, U. S. C., which provides, "All citizens of the United States shall have the same right, in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property."

A few preliminary remarks will clarify the matter. Under the law of California—at least as respects all except American citizens of Japanese ancestry—a minor child is clearly entitled to take and hold real estate of all kinds, as well as personal property. *Estate of Yano*, 188 Cal. 645, 206 Pac. 995, 997 (1922). Moreover, as stated by the Supreme Court of California in the *Yano* case, *supra*, (206 Pac. at p. 998):

> "Delivery to, and acceptance by, an infant, will be presumed. When a deed clearly beneficial to an infant is given to him, his acceptance will be presumed, and the recording of the deed is a sufficient delivery."

In accord are *DeLevillain* v. *Evans*, 39 Cal. 120, 123; *Donner* v. *Palmer*, 31 Cal. 500, 518; *Turner* v. *Turner*, 173 Cal. 782, 786, 161 Pac. 980, 982. In the *Yano* case, the court dealt with the possibility of a resulting trust in favor of the parent, due to his payment of the consideration, and ruled that no such trust would arise *(ibid.)*. To the same effect are *People* v. *Fujita*, 215 Cal. 166, 169, 8 P. (2d) 1011, 1012; *Russ* v. *Mebius*, 16 Cal. 350, 356; *Hamilton* v. *Hubbard*, 134 Cal. 603, 605, 65 Pac. 321-322. Finally, as the court stated in the *Yano* case, (206 Pac. at p. 998):

> "The act of petitioner, in securing conveyances of land to his daughter, while confessedly carried out because the law of California did not permit him to buy it for himself, was in no sense unlawful, since the daughter is a citizen of the United States and entitled to acquire and own real estate."

We have, then, a situation where, by state law, it is recognized not only that it is proper for a parent to make an effective gift of real estate to a minor child, but that there is, even in the case of an ineligible alien parent, no taint of illegality in the transaction. It is lawful, normal, and proper in all respects.

Fred Oyama, however, although he received the record title to the land in question, had the misfortune of being, in California, by reason of the decision of the California courts in the instant case, something less than a full American citizen, because his father and mother were Japanese. Had he been Fred Johnson, he would have grown to manhood in full ownership of his land; no procedure of the State of California could have deprived him of it without adequate compensation. Being Fred Oyama, he was faced with the necessity of defending the gift he received against the claim of the State that the property had in reality gone

to his parents and thence to the State by virtue of Section 7 of the Alien Land Law, *infra*. Unlike other children, his acceptance of the land will *not* be presumed (*cf. Estate of Yano*, quoted *supra*); he must prove that he got it. This, alone, it would appear, denies to him the equal protection of the laws.

We need not stop there, however. An examination of the facts upon which the court below relies serves to emphasize not only that Fred Oyama must make proof which Fred Johnson need not make, but also that the proof required is well-nigh impossible of attainment. The evidence which the court below finds sufficient to warrant holding that Fred Oyama never really received the gift from his parents is summarized by the court at R. 117-118. The court refers to four items of "evidence", and states that "the inferences to be drawn from [them] * * * are ample" to support the trial court's finding of a violation of the statute. Each item is worthy of further analysis.

1. The first item referred to is (R. 117):

> "* * * the evidence that the real property was conveyed to the son, thereby putting it beyond the power of the father to deal with the property directly * * *."

With due respect, we utterly fail to see how, if that be evidence *against* the validity of the transaction, Fred Oyama ever had a chance. The California law requires, albeit we think unconstitutionally, that ineligible aliens not own land, nor even have the use of agricultural land. Yet the court states that a conveyance *to the son*, an American citizen, which put it beyond the reach of the ineligible alien, is evidence from which an inference can be drawn that there was *not* a transfer to the son—that the transaction was merely colorable. That "evidence" will exist in every case: Fred Oyama can *never* receive land purchased for him by his parents, because the very act by which they attempt not to violate the statute is evidence that they in fact do violate it.

If the court means no more than that the transfer to Fred Oyama indicates an awareness by his father that the laws of California made it impossible for the father to take the land himself, we will agree, but we will deny that any inference unfavorable to Fred Oyama can be drawn from that fact. Again we may refer to *Estate of Yano, supra* (206 Pac. at p. 998):

> "The act of petitioner, in securing conveyance of land to his daughter, while confessedly carried out because the laws of California did not permit him to buy it for himself, was in no sense unlawful, since the daughter is a citizen of the United States and entitled to acquire and own real estate. There is nothing in the evidence to indicate that it was not the purpose of this conveyance to vest absolute title to the land in the minor."

With due respect to the court below, the same comment may equally well be made here.

2. The next item of evidence from which the inference is drawn is (R. 117):

> "* * * the father's failure to file the reports required of a guardian."

Fred Oyama, in other words, may lose his gift because of what *someone else* does later. If Fred Johnson's father as his guardian failed to file reports, nothing would happen to anyone but Fred Johnson's father; he would be subject to the discipline of the court for failure to file, just as is Fred Oyama's father. Fred Oyama is in the position of meeting this charge that his guardian failed to file reports only because the property given to him was of a character that his father could not own. He is subject to an additional burden, that of, presumably, acting as a guarantor of his guardian's conduct, simply because he is "the minor child of such [ineligible] alien." Fred Johnson need not worry; Mr. Johnson can be as illegal and as careless as he pleases, and it creates no inference that he is recalting in

his gift of the property to his son. Mr. Oyama's conduct, in California, can be used, ten years later, to bolster the effort of the State to deprive Fred Oyama of his property in its entirety.

Moreover, another comment is warranted with respect to the reports. The first reports to which the court below refers (R. 111) are those required by Section 4 of the Alien Land Law, *infra*. But that section, as amended in 1920, prohibited Fred Oyama's father from being his guardian at all; ineligible aliens were denied that privilege. That disqualification was declared unconstitutional by the California courts in *Estate of Yano, supra*, in 1922. But those same 1920 amendments, by Section 5, *infra*, required *only* persons *other than an ineligible alien parent*, who might under the 1920 Act be appointed, to file reports annually. Not until it was further amended in 1943 did the law provide for a system of annual reports by an ineligible alien-guardian by a revision of Section 4. Cal. Stats. 1943, p. 2999.

The brief by the State in opposition to certiorari [2] appears to agree that, under those circumstances, Section 4 may not have required reports of Fred Oyama's guardian until 1943 (p. 10), and it certainly may well be true that he did not understand until 1943 that he was required to file any reports under a section of a statute which expressly prohibited him from its operation. The fact that the court, although he was known to be the guardian and had twice appeared in guardianship proceedings before the court in connection with mortgages (R. 108), did not, so far as appears, take any action to compel the reports, lends credence to this. Moreover, it also tends to cast doubt on whether Section 5 was then thought to require reports from an ineligible alien parent acting as guardian. Although the Brief in Opposition for the State now says Section 5 also required reports from Fred Oyama's father (p. 10), a fair reading of that section would rather suggest that the Sec-

[2] Cited hereafter as Brief in Opposition.

tion 5 reports were to be filed by a non-parent guardian. The failure both of the court and of the District Attorney to take action under Section 5 may well indicate that no one has heretofore believed Section 5 to be applicable.

When, in 1943, the State finally removed from its statute-books a law which had been declared unconstitutional over 20 years before, and again required Section 4 reports by parent guardians, Fred Oyama's guardian was detained in a relocation camp, physically removed from California and from the supervision of his son's land. He remained there during the entire time from 1943 until this action was filed on August 28, 1944. Moreover, the record shows that from the time of the father's removal from California until February 10, 1944, he received no proceeds from the property (R. 81, 84, 85; P. Exhs. 3, 4).[3]

3. The third item of evidence relied on by the court below is (R. 117):

> "* * * the unexplained[4] failure of the father, or any one of the defendants, to offer himself as a witness, * * *."

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[3] The State's Brief in Opposition also refers to other reports required by Section 1553 of the California Probate Code (p. 10). The opinion of the court below (R. 108) makes it clear that the reports as to which evidence was introduced were only those required by the Alien Land Law; and it is likewise wholly clear that it is only the absence of these reports which was referred to by the court in its summary of the supporting evidence (R. 111-112).

[4] At the trial of the action, about a year after it had been filed, the State requested counsel for defendant to produce the father so that it might call him as a witness (R. 97). No attempt had been made to subpoena him, nor to take his deposition, though he had been for most of the time in a detention camp and easily available to the State. The matter closed with this colloquy (R. 99):

> "Mr. Wirin: I have no objection to stating where he is, but in the absence of process I don't feel that I am under obligation to produce him. I hope this discussion will not hurt his case.
>
> "The Court: No."

Again, Fred Oyama stands to lose his gift because of something that someone else has done. Again he is made the guarantor of his father's conduct. The father never claimed that he had any interest in the property. We see no basis for an obligation on his part to "offer himself as a witness." In addition, it certainly must be admitted by the State that it is drawing a long bow when it attempts by conduct of others in 1945 to destroy the validity of the deeds and other evidences of title that Fred Oyama received over ten years before.

4. The fourth, and final, item of "evidence" relied upon by the court below is (R. 117-118):

> "* * * the presumption created by Section 9 of the Alien Land Law."

That section provides:

> "A prima facie presumption that the conveyance is made with such intent [to prevent, evade or avoid escheat] shall arise upon proof of any of the following groups of facts:
>
> "(a) The taking of the property in the name of a person other than the persons mentioned in Section 2 hereof if the consideration is paid or agreed or understood to be paid by an alien mentioned in Section 2 hereof;"

Several comments on this presumption are appropriate. The first concerns its substance. Section 9—the escheat section—provides that escheat shall take place "if the conveyance is made with intent to *prevent, evade or avoid* escheat" (italics supplied). The presumption operates on the matter of proof of that intent.

But, at least in normal usage, there is no taint of impropriety, much less of illegality, in either an intent to "prevent" escheat or an intent to "avoid" it. Each of those indicates action which has the highest respect for the law, and full desire to obey it. We say it advisedly: under this presumption Fred Oyama could *never* receive a

gift of land from his father. Every item of evidence which he might adduce to prove that his father had taken the most meticulous and elaborate efforts to give him the land would be strengthening the State's case. Upon what evidence, we may ask, can Fred Oyama ever prove that his father did not intend to "prevent" escheat? When it is "presumed" by the payment of the consideration for the land by Fred's father that he intended to "prevent" escheat, and when an intent to "prevent" escheat is enough to cause escheat, Section 9 is no more than a trap—a substantive rule, in the guise of a presumption, that every gift of land by a Japanese alien father to his minor children fails, and the property passes to the State. Certainly, as a substantive rule that a Japanese alien cannot make a *bona fide* gift of land, Section 9 is unconstitutional. *Heiner* v. *Donnan*, 285 U. S. 312.

The second comment on the presumption is the overwhelming evidentiary effect given to it. This presumption does not decide merely who has the burden of going forward. This presumption is "evidence". It was so regarded by the court below (R. 117-118), and indeed regarded as evidence from which inferences could be, and were, drawn *(ibid.)*. The State's Brief in Opposition purports to announce the California rule to be (p. 8):

> "that the trial court may properly conclude that a presumption outweighs in evidentiary value the testimony of many witnesses."

That was certainly the effect accorded it in this case.[5]

Even were it possible, therefore, for there to be evidence which would rebut the presumption, it is apparent that Fred Oyama would face an overwhelming task. The presumption retained its full vigor, and rebutted, all the evi-

[5] It is difficult to see why with this presumption already in effect the legislature of California in 1945 added the further provision that in addition to the presumption, the burden of proof was on the defendants in each case in which the presumption applied. Cal. Stats. 1945, c. 1129, p. 2168; see Appendix A, *infra*.

dence here. Without repeating the Statement, *supra*, there were in evidence the deeds to Fred Oyama, officially recorded (R. 3, 6, 60), which, in the usual case, are conclusive. *Hamilton* v. *Hubbard*, 134 Cal. 603, 605, 65 Pac. 321-322. There was the evidence of the proceedings in the state courts of California in which Fred's father, having sworn that at least one of the parcels of land belonged to Fred (P. Exh. 1), was appointed his guardian (R. 59), and in that capacity twice received authority from the California courts to borrow money on the lands in question (R. 108). There was the testimony of John Kurfurst, one of the defendants called as a witness by the State, who had long known the Oyamas and had "managed" the property when they were evacuated, that he understood that the land in question belonged to Fred Oyama, that receipts for income from the land were signed by Fred Oyama, that Fred's father had told him that it was Fred's land and that he knew the father was running the boy's business (R. 80-97).

Despite this evidence, the trial judge stated (R. 103):

> "I think that there is only one way I could determine this matter under this evidence and that would be simply to hold, that the plaintiff has, by the application of the inference, the statutory inference, the presumption, and by the evidence that has been produced here, has maintained the preponderance of the evidence and that judgment be for the plaintiff."

And, from other elements in his opinion, he was quite clearly thinking of the intent to "prevent" rather than to evade, so that in fact all the evidence which would normally operate in Fred's favor was considered evidence against him. The evidence of the deed and record title and the guardianship the trial court found to be facts *against* Fred Oyama, because they were, in his mind, designed to *prevent* escheat (R. 102).

Again, as in our first comment on the presumption of Section 9, we come out with the conclusion that it is really

a rule of law, not a presumption at all. The effect is to have legislative fiat "take the place of fact in the judicial determination of issues involving life, liberty or property." *Western & Atlantic R. R.* v. *Henderson*, 279 U. S. 639, 643. Whether we look at its formal content, or at its operation, it amounts to no more than a statement that, in California, Fred Oyama cannot ever receive a gift of agricultural land from his parents.

The final comment on this presumption is perhaps, after all, the most obvious—that Fred Oyama must face a burden which Fred Johnson need not face, and he must face this burden solely because of his race—solely because his parents are Japanese. This is true whether the presumption is conclusive or is really rebuttable; whether it is equal to the evidence of many witnesses or one witness, or whether or not one considers any of the other points discussed above.

A gift by a parent to a child is a normal, usual and expectable occurrence. In the case of an American citizen child whose parents are British aliens, no burden is cast upon the citizen to prove his gift. But, in the case of a child who, though also an American citizen, has parents who are Japanese aliens, the gift may be defeated unless the child can come forward and adduce proof as to the intent of his parents. Patently, the presumption operates unequally on different classes of citizens, and the classification is one based solely on racial origin. It cannot stand, as such, under the Constitution.

Nothing in *Cockrill* v. *California*, 268 U. S. 258, in which the validity of this presumption was sustained in a criminal case, is inconsistent with this view, since the point here at issue was not there involved. Here we have a gift made by a father to his son—a natural and expectable occurrence —not to a stranger, as in the *Cockrill* case. Whatever justification there may be for applying a presumption such as this to a gift to a stranger, certainly the policy considerations do not apply with equal force here. Fred Oyama has

a right to expect gifts made to him to be treated at their face value, just as Fred Johnson does.

Moreover, it may be questioned that the decision in the *Cockrill* case is sound. The later decision in *Morrison* v. *California*, 291 U. S. 82, which held unconstitutional another of the presumptions of the California Alien Land Law, evidences an approach to the problem which would deny validity to this presumption, as well. There, the court weighed the balance of convenience in proof, and concluded that none could be served. What was said there could equally well be said here (291 U. S. at pp. 92-93):

> "Now, plainly as to Morrison, an imputation of knowledge is a wholly arbitrary presumption. * * * Nothing in the People's evidence gives support to the inference that Morrison had knowledge of the disqualifications of his tenant, or could testify about them. What was known to him, so far as the evidence discloses, was known also to the People, and provable with equal ease."

Fred Oyama was six years old when he was given the first parcel of land, and nine years old when he was given the second parcel. Can the State seriously urge, here, that he is in a better position than the State to adduce evidence, in 1945, on the nature of his parents' intentions some ten years before? Just as in the *Morrison* case (see 291 U. S. at p. 96), if he doesn't know what his parents' intentions were, he loses his gift of the land. Mr. Justice Cardozo saw the result of such a presumption in the *Morrison* case, and struck it down (*ibid.*):

> "There can be no escape from hardships and injustice, outweighing many times any procedural convenience, unless the burden of persuasion * * * is cast upon the People."

There, it was racial origin that was in issue; here, it is intent. In neither case can there be any showing that the State should not establish its case on the merits, rather than rest upon a presumption which may in fact be insuperable.

In sum, we submit that the Alien Land Law, as here applied, denies to Fred Oyama, a citizen of the United States, the protection of the laws equal to that which is applied to Fred Johnson and of the privileges and immunities possessed by Fred Johnson. Each receives a deed to a parcel of land paid for by his father as a gift to him while still a minor. Fred Johnson has his land; he need not worry thereafter, for the State of California will not only not try to deprive him of it but will in fact use its machinery of justice to make sure that it and its income is held for him properly and safely. Fred Oyama, quite the contrary. He must defend it against a claim that he never got it. He must face the realities of life: that the State can use as evidence *against* him the fact that his father did not keep title in himself and that his father may be remiss in his conduct thereafter, even many years thereafter, by failing to carry out his statutory duties as guardian, or by failing to come in and offer himself as a witness in an escheat proceeding. And, if he is really realistic, he will recognize that he is presumed to be not the owner anyway, and must meet a formidable, if not impossible, burden of proof—a burden which continues to exist as evidence against him all the way to the Supreme Court of his state. Is this, in truth, the "protection of equal laws"?

It may be said that Fred Oyama is no worse off than Fred Johnson, because Fred Johnson would be in the same position as Fred Oyama if Mr. Oyama had given his property to Fred Johnson. That we agree, is true, but it is wholly unrealistic. One cannot ignore the parent-child relationship. California, by its statutes, has recognized that relationship, just as has every other state. California Civil Code, Secs. 196, 206; California Penal Code, Sec. 270-c; California Welfare and Institutions Code, Sec. 2576.[6] Fred Oyama, as an

[6] Section 196 of the Civil Code, for example, provides: "The parent entitled to the custody of a child must give him support and education suitable to his circumstances. If the support and education which the father of a legitimate child is able to give are inadequate, the mother must assist him to the extent of her ability."

American citizen, has every right to expect that the normal, usual, human relations will be permitted to him, as well as to anyone else. Not so, under this law. His father, under the decision below, cannot make gifts to him of land like this. The expectancy of parental assistance is, *pro tanto*, denied him. Maybe it is true that Fred Johnson cannot acquire gifts from Mr. Oyama, and that no one else can acquire such gifts, without being subject to the same disability. But those persons have not suffered thereby; they have no reason to expect such gifts. Fred Oyama does. He is denied one of the privileges inhering in every other citizen except those whose parents happen to be Japanese—the privilege of the unlimited bounty of parents eager, as are all parents, to advance his welfare as best they can. A law which thus discriminates against him cannot meet the tests which our Constitution guarantees.

II.

THE ALIEN LAND LAW IS ALSO UNCONSTITUTIONAL ON ITS FACE AS IN CONFLICT WITH THE FOURTEENTH AMENDMENT.

We need not rest, in this case, solely upon the ground heretofore urged in Point I—that the Alien Land Law, as here applied to Fred Oyama, a citizen, is unconstitutional. In addition, it is also our position that the law on its face fails to meet the test of the Fourteenth Amendment. Both as to Fred Oyama and as to Kajiro Oyama, and as to either of them—whichever of them may be said to have acquired title to the tracts of land here in question—the Alien Land Law, which purports to escheat those tracts to the State, must be declared to be unconstitutional. The decision below must also be reversed on this ground.

A. The Alien Land Law is Race Legislation Aimed Directly at the Japanese.

The Alien Land Law of California, the prototype of the "ineligible alien" laws which now are found in several

other states,[7] has had a long history. Its origin must be sought even prior to 1913, when the law was first enacted. Both in its genesis, and in its subsequent history, it bears the unmistakable stamp of purely racist—anti-Japanese—legislation. Almost all of its history can be summed up in the frank statement of the Supreme Court of California in 1923 in *Estate of Yano*, 188 Cal. 645, 658, 206 Pac. 995, 1001, that the object of the law is "to discourage the coming of Japanese into the State". The only addition necessary would be that it was also intended "to discourage the stay of those who had already come."[8]

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[7] In the order in which the statutes were enacted, the other states are: Arizona (1917), see Ariz. Code (1939) §§ 71.201-71.206; Louisiana (1921) Const., art. XIX, § 21; New Mexico (1922) Const., art. II, § 22; Idaho (1923), see Idaho Code (1932) §§ 23.101-23.112; Montana (1923), see Mont. Rev. Code (1935) §§ 6802.1-6802.8; Oregon (1923), see Ore. Comp. Laws (1940) §§ 61.101-61.111; Kansas (1925), see Kan. Gen. Stat. (1935) §§ 67.701-67.711; Utah (1943), see Utah Code Ann. § 78-6a (Supp. 1945) (this law was, however, repealed in 1947); Wyoming (1943), see Wyo. Comp. Stat. (1945) §§60.401-60.407 (this despite a provision of the Wyoming constitution which provides (Art. I, §29): "No discrimination shall ever be made by law between resident aliens and citizens as to possession, taxation, enjoyment and descent of property." The law may, of course, be held effective against non-resident ineligible aliens.); Arkansas (1943) Acts 1943, p. 75 ("No Japanese or a descendant of a Japanese shall ever purchase or hold title to any lands in the State of Arkansas.")

[8] The fact that the California law has a racist, anti-Japanese origin and history has been pointed out many times by many scholars who have studied the evidence. In fact, we are aware of no study which has reached a contrary conclusion. Among the most significant of such studies are Millis, *The Japanese Problem in the United States* (1915); Buell, *The Development of Anti-Japanese Agitation in the United States*, I, 37 Political Science Quarterly 605 (1922), II, 38 *id.* 57 (1923); Ichihashi, *Japanese in the United States* (1932); Bailey, *California, Japan, and the Alien Land Legislation of 1913*, 1 Pac. Hist. Rev. 36 (1932); H. Rep. No. 2124, 77th Cong., 2d Sess. (1942); McWilliams, *Prejudice* (1944).

Within the past year, inspired by the renewed enforcement campaign of what had been considered for a decade as a dead letter

1. The Law has an Anti-Japanese origin.

The influx of Japanese to the West Coast states began with the legalization of Japanese labor emigration by the Emperor in 1890, although the numbers were not large in any one year until 1900.[9] Discriminatory measures against the Japanese were proposed beginning in the 1890's, but they received serious consideration only after 1900.[10] The first resolution of the California Legislature urging Congress to protect American labor by restricting Japanese immigration is dated 1901.[11] In July, 1908, negotiations with the Japanese Government resulted in the "gentlemen's agreement" that Japan would limit passports to the United States to non-laborers, laborers domiciled in the United States, "settled agriculturalists" and families of persons already here.[12] That agreement, together with strong

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statute, two distinguished authors have again thoroughly explored the question and reached the same conclusion: Professor Dudley O. McGovney, in *The Anti-Japanese Land Laws of California and Ten Other States* (1947), 35 Calif. L. Rev. 7; and Edwin E. Ferguson in *The California Alien Land Law and the Fourteenth Amendment*, 35 Calif. L. Rev. 61 (1947). A recent Comment in the Yale Law Journal, *Alien Land Laws: A Reappraisal*, 56 Yale L. Jour. 1017 (1947), concurs. Counsel acknowledge their obligation to the authors of these studies for references to sources for much of the material in the sections immediately following in this brief.

[9] In that year, 12,628 Japanese entered the United States. *Report of the Commissioner of Immigration for 1900*, p. 10. "Hardly had the Japanese begun to arrive at our ports when hostility against them was registered by groups in the Pacific states. Men in public life quickly realized that the Japanese, as successors to the prejudices which the Chinese had aroused, would make excellent political capital." H. Rep. No. 2124, 77th Cong., 2d Sess. (1942) p. 72. See also Ferguson, *supra*, note 8, pp. 62-63, on the transfer of hostility from the Chinese to the Japanese.

[10] *Ibid.* The development of anti-Japanese sentiment from 1900 to 1913 is sketched in Ferguson, *supra*, note 8, pp. 64-65.

[11] Ichihashi, *Japanese in the United States* (1932) p. 231.

[12] Report of the Commissioner of Immigration for 1908, pp. 125, 213.

Presidential intervention, prevented the passage of the alien land laws proposed and strenuously urged in the California legislature in 1909 and 1911.[13] At the next session in 1913, however, notwithstanding the intervention of the Secretary of State, the Alien Land Law was passed.[14] Cal. Stats. 1913, p. 206.

The racial basis for the legislation has never been more frankly stated than by the Attorney General of California, and one of the authors of the 1913 law, Ulysses S. Webb:

> "The fundamental basis of all legislation upon this subject, State and Federal, has been, and is, race undesirability. It is unimportant and foreign to the question under discussion whether a particular race is inferior. The simple and single question is, is the race desirable. * * * It [the law] seeks to limit their presence by curtailing their privileges which they may enjoy here; for they will not come in large numbers and long abide with us if they may not acquire land. And it seeks to limit the numbers who will come by limiting the opportunities for their activity here when they arrive."[15]

Somewhat later in his brief in support of the law in the 1923 cases in this Court (*infra*, pp. 40-52), Mr. Webb revealed one of the bases for determination of race "desirability": the law "was intended to free the American farmer from the competition, upon American soil, of the Oriental farmer" (brief in *Webb* v. *O'Brien*, p. 148); "If the Oriental farmer is the more efficient, from the standpoint of soil production, there is just that much greater certainty of an economic conflict which it is the duty of statesmen to

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[13] Bailey, *Theodore Roosevelt and the Japanese-American Crises* (1934), c. 13.

[14] See H. Rep. No. 2124, *supra*, note 8, pp. 75-78; Comment, 56 Yale L. Jour. 1017, 1020.

[15] From a speech before the Commonwealth Club of San Francisco on August 9, 1913, quoted in *People in Motion* (U. S. Dept. of Interior, 1947) p. 37.

avoid" (brief in *Porterfield* v. *Webb*, p. 148); "It was the purpose of the people in a practical way to prevent ruinous competition by the Oriental farmer against the American farmer." (brief in *Frick* v. *Webb*, p. 486).[16]

In the years immediately following 1913, the anti-Japanese sentiment subsided somewhat, particularly because the demand for farm labor during the war required the services of the Japanese as farmers and tenants. However, despite the "'gentlemen's agreement", immigration continued at a fairly high pace—the net gain from 1913 to 1920 being about 19,000. The end of the war brought the resumption of hostility.[17] In 1919, the California State Board of Control issued a report on the leasing of land in California to aliens ineligible for citizenship. *California and the Oriental* (1919). The report made passing references to Hindus, who were negligible in number, and to the Chinese, who were found to be not a menace because generally engaged in small commercial enterprises. Almost all of the report dealt with the "menace" from the Japanese, and the report was forwarded to the Secretary of State by the Governor with a letter urging control of Japanese immigration. *Id.*, pp. 11-12. Governor Stephens, in his letter to the Secretary of State transmitting the report, was frank in his statement of what was no more than obvious—that the Alien Land Law of 1913 was aimed solely at the Japanese. He stated (p. 11):

> "In 1913 the legislature of this state passed a statute forbidding the ownership of agricultural lands by *Jap-*

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[16] One should add the observation of Thomas A. Bailey (in *California, Japan, and the Alien Land Legislation of 1913*, 1 Pac. Hist. Rev. 36, 57 (1932): "The people of that state [California] did not object particularly to Chinese and Negroes, who were racially different, but who stayed in their place. But they did object to the Japanese because they were efficient, thrifty, ambitious, and, above all, unwilling to remain 'mudsillers'."

[17] Ferguson, *supra*, note 8, pp. 68-69. H. Rep. No. 2124, *supra*, note 8, pp. 81-82.

anese and limiting their tenure to three year leaseholds. It was the hope at that time that this statute might put a stop to the encroachments of the *Japanese* agriculturalist. This legislation followed some years after a proposed bill by the Legislature providing for separate schools for Japanese students." (Italics ours.)

The following year, after a violent campaign against the "yellow peril", and with liberal use of the "once a Jap always a Jap" non-assimilability argument, the initiative amendments of 1920 were passed.[18] See H. Rep. No. 2124, *supra*, p. 86; *Hearings on Japanese Immigration before House Committee on Immigration and Naturalization*, 66th Cong., 2d Sess. (1920) pt. 1, at pp. 220, 346. These amendments generally made the law more rigorous, particularly in deleting the provision authorizing leases of agricultural land for not more than three years. Cal. Stats. 1921, p. lxxxiii. Subsequent amendments—the last ones in 1945—have been added from time to time making the law more drastic and more sweeping, adding criminal penalties for its violation, and the like. In 1946, however, the people of California voted decisively against approval of the amendments to the Alien Land Law enacted by the legislature since 1920 (Proposition No. 15). See *People in Motion*, *supra*, note 15, p. 45; Ferguson, *supra*, note 8, p. 73; *Pacific Citizen*, November 9, 1946, p. 1.

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[18] The "Argument in Favor of Proposed Alien Land Law", drafted by the proponents of the legislation and officially mailed together with arguments against the proposed law, to every voter pursuant to Cal. Elections Code, Secs. 1500-1516, devoted itself to arguments against the Japanese. Apart from one or two references such as "Orientals, largely Japanese", or "Orientals, more particularly Japanese", the entire argument is directed to the Japanese "menace". McGovney, *supra*, note 8, p. 14. Governor Stephens stated, at the time, that "In my opinion, the present agitation [against the Japanese] in California was inspired by candidacy for office. • • • The dominant factors in the movement are actuated by their desires for political preferment." H. Rep. No. 2124, *supra*, note 8, p. 82.

2. The law has had a consistent anti-Japanese history of enforcement.

The anti-Japanese, racist, basis for the law is demonstrated not only by its origins, but by the character of the escheat proceedings which have been brought by the State under it. One perhaps need say no more than that in the 34 years from 1912 to 1946, of 76 escheat proceedings, 1 involved a Hindu, 2 involved Chinese, and every one of the remaining 73 involved Japanese. This information, from the official Reports of the Attorney General of California, bears witness to the real purpose of the statute—to the truth of the statements of Governor Stephens and the California Supreme Court already quoted.[19]

Even more striking, perhaps, are the more recent figures revealed by the Attorney General's Reports: Every one of the 59 escheat cases filed by the State since Pearl Harbor was filed against a Japanese. The hysteria generated in order to foster the Japanese evacuation program, and in turn accentuated by it, found one of its expressions in the first enforcement for over a decade of the traditional anti-Japanese statute. The campaign was aided by a report of a California Senate Committee—Senate Fact Finding Committee on Japanese Resettlement—which not only opposed the return of any Japanese—citizens or aliens—to California until after the war, but also recommended an appropriation of $200,000 for more vigorous enforcement of the Alien Land Law (Report of May 1, 1945, pp. 3-5, 8). The appropriation was made (Cal. Stats. 1945, p. 2739), together with amendments which attempted to prevent the operation of the statute of limitations on the previous decade of inactivity (*ibid.* p. 2177). That device we deal with in Point III, *infra*. In any event, the years since Pearl Harbor have shown the law in its true colors.

The reported cases involving the law show the same picture. Every one of the escheat cases, and almost all of the

[19] A chart showing the detailed summary of the information from the Reports is set out in Appendix B, *infra*.

non-escheat cases, involve Japanese. A complete table of all reported cases through August, 1947 is set out in Appendix C, *infra*.

Even the excuses for non-enforcement during the 1930's reveal the racist, anti-Japanese nature of the law. The Attorney General of California stated in 1944 that the reason for non-enforcement of the law during the decade prior to Pearl Harbor was "a reflection of the National policy to refrain from acts which might be regarded as unfriendly to the Japanese race and the Japanese empire."[20] The same reason was given by the California Senate Committe. It stated (p. 3):

> "The Federal authorities since the beginning have not looked with favor upon the enforcement of the law just as they opposed its enactment in the beginning. The principal reason for this attitude seems to have been that expressed by William Jennings Bryan when, as Secretary of State, he came to California in opposition to the enactment of the law. He stated that the enactment of the law might turn a now friendly Nation into an unfriendly Nation. Undoubtedly, the attitude of the Federal authorities on this matter has been an important influence."

In summary, when the law is enforced, it is enforced against the Japanese. When it is not enforced, it is due to the desire not to offend Japan. How can it rationally be said that the law is not a racial law, directed at the Japanese race?

One other matter should be disposed of here. There is a suggestion in the State's Brief in Opposition (p. 13) that the phrase "ineligible to citizenship" in the Alien Land Law implies more than *racial* ineligibility. There are, of course, other than *racial* ineligibilities: "deserters" (U. S. C., Title 8, Sec. 706); "subversives" (*id.*, Sec. 705); persons who cannot speak the English language (*id.*;

[20] Proceedings, California Land Title Association (38th Ann. Conf. 1944) p. 97.

Sec. 704); and persons who do not have good moral character, are not attached to the principles of the Constitution, and the like (*id.*, Sec. 707(a)). Yet it will not be disputed—indeed it was conceded in the court below—that none of these categories of ineligibles have ever been barred from land ownership. There is no record of any proceeding of any sort in California under the law where the person proceeded against was ineligible for any reason other than his race.[21] We fully agree with the State's Brief in Opposition (p. 12) that "Race prejudice and race hatreds, as such, are ugly things." We cannot, however, on this law, with its racist, anti-Japanese origin, and its racist, anti-Japanese enforcement, agree with the State's further comment (*ibid.*): "We have neither the desire nor do we believe we are under any necessity to excuse or defend these things." That is precisely what this statute is; that is precisely what the State must defend, whether it desires to do so or not.

Finally, we should add that, whatever may have been the effect of the phrase "aliens ineligible to citizenship" in 1913 or 1920, the successive narrowing of this group by Congress through amendment of the Naturalization Laws has left this restriction applicable, in practice, to but one racial group in California—the Japanese. Formerly, the right to become a naturalized citizen was denied, with minor exceptions, to all but white persons and persons of African nativity or descent. R. S. § 2169; Act of February 18, 1875, c. 80, § 1, 18 Stat. 318; Act of May 9, 1918, c. 69, § 2, 40 Stat. 547. Descendants of all races indigenous to the Western Hemisphere were removed from the restriction by the Act of October 14, 1940, c. 876, § 303, 54 Stat. 1140. More recently, the ban was removed from the Chinese (Act of De-

[21] Indeed, considering the Alien Land Law as a whole, it may well be doubted whether an escheat proceeding could be successfully maintained under it against a Frenchman, let us say, who had been denied citizenship on the ground of his inability to speak adequate English.

cember 17, 1943, c. 344, § 3, 57 Stat. 601) and the Filipinos and peoples indigenous to India (Act of July 2, 1946, c. 534, § 1, 60 Stat. 416; U. S. Code Cong. Service (1946) p. 401). Figures are not available for California alone, on the number of aliens racially ineligible to naturalization under the present law. In 1940, however, of those residing in the continental United States, over 98 percent were Japanese.[22] Even were one to blind himself to the realities in the earlier years, there can now be no escape from the conclusion that this is, for all practical purposes, an anti-Japanese statute.

B. The Alien Land Law, As An Anti-Japanese Law, is in Violation of the Fourteenth Amendment.

Pollock and Maitland tell us that "in the course of the thirteenth century our kings acquired a habit of seizing the lands of Normans and other Frenchmen" because the Normans were traitors and the Frenchmen were enemies. This conduct was later "generalized" into a right to seize any land owned by an alien. "Such an exaggerated generalization of a royal right will not seem strange to those who have studied the growth of the king's prerogatives." *I History of English Law* (2d ed.) 463. Lord Coke later sought a rationalization for the rule that an alien could not hold land in England: that in time of war they would discover the secrets of the realm, would sap its revenues, and tend to its destruction, and that in times of peace, so much of the land might be owned by aliens that there would be too few freeholders for jury duty and a failure of justice would follow. *Calvin's Case*, 77 Eng. Rep. 377, 399 (1609). Most of those who have examined these early rules, in Eng-

[22] The detailed figures, from 1940 Census, "Characteristics of the Non-White Population", p. 2, are as follows:

Japanese	47,305
Korean	749
Polynesian	9
Other Asian	95
Total	48,158

land and in other countries, surmised that they were related to the feudal system, when it was felt that military service could be exacted only of subjects owing allegiance. See Blackstone, *Commentaries*, Vol. II, p. *250; Wheaton, *International Law* (4th Eng. ed:) 134; *State* v. *Boston, Concord & Montreal R.R.*, 25 Vt. 433, 438 (1853).

Whatever its feudal *raison d'etre* may have been, it is fairly clear now that its survival is no more than an anachronistic remnant of the Middle Ages. France abolished all restrictions in 1819; the Parliament in England followed in 1870. In the United States only seven states retain legal restrictions which approximate the common law system, and in 16 states—including New York, with almost one-quarter of all of the aliens in the United States— there are no restrictions whatever.[23]

We are not required in this case to determine whether there is any legitimate basis for discrimination by the State against all aliens, as a class, with respect to the right to hold land. Prior to *Terrace* v. *Thompson*, 263 U. S. 197, the Court had intimated, though never squarely held, that the power of the States to prohibit alien land ownership was not foreclosed by the Fourteenth Amendment. *Cf. Phillips* v. *Moore*, 100 U. S. 208; *Hauenstein* v. *Lynham*, 100 U. S. 483; *Blythe* v. *Hinckley*, 180 U. S. 333; *Toop* v. *Ulysses Land Co.*, 237 U. S. 580, 582; Freund, *Police Power* (1904) Secs. 134, 706. That conclusion might well now be challenged, with the alleged considerations of national defense now fully the responsibility of the Federal Government,[24] and with no other apparent rational basis for a discrimination in rights to own land between aliens (at least resident aliens) and citizens.

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[23] McGovney, *supra*, note 8, pp. 20-24.

[24] Recognition of this fact led both New York and New Jersey, in 1944 and 1943 respectively, to remove restrictions on enemy aliens, since state legislation as a security measure was unnecessary. N. Y. Laws, 1944, p. 627; N. J. Laws, 1943, p. 395. See Ferguson, *supra*, note 8, pp. 86-87; McGovney, *supra*, note 8, pp. 39-41.

But what we challenge here is not a statute which puts aliens in one class and citizens in another. What we challenge here has no counterpart in the feudal system, or in the common law; nor has it a rationalization in Lord Coke or Blackstone. What we challenge here is a discrimination which singles out one small group of aliens—the Japanese—and forbids them to own land. Not only does the law limit its effect to the small class, but it accentuates its severity in proportion as it narrows its field. As the Supreme Court of California stated in this case (R. 111):

> "the scope of the statute is much broader than the acquisition and ownership of land; it includes the right to acquire, possess, enjoy, use, cultivate, occupy, transfer, transmit and inherit real property."

Sections 1 and 2 of the Alien Land Law (*infra*) limit Japanese aliens to interest in real property in California to the extent prescribed by the 1911 treaty between Japan and the United States (37 Stat. 1504). This treaty has a specific grant of a right to own or lease houses, warehouses or shops, and to lease land for residential and commercial purposes, but contains no provision relating to agricultural lands. In consequence, in California, a Japanese alien may safely approach agricultural land only in the capacity of a day laborer.[25]

That classification—that discrimination—we believe to be a denial of the equal protection clause of the Fourteenth

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[25] Indeed, it is not wholly clear now whether the denunciation and consequent end of the United States-Japanese treaty of 1911 in 1939 (Dept. of State Bull. (July 29, 1939) Vol. I, p. 81) has had the effect of denying to Japanese aliens in California rights to have any interest in *any* land. The Attorney General of California has intimated that the ban is now complete (Proceedings, California Land Title Assoc. 38th Annual Conference 1944, pp. 91-101), although a recent lower court decision to that effect has been reversed in the California intermediate courts. Palermo v. Stockton Theatres, 76 Adv. Cal. App. 26, 172 P. (2d) 103 (1946), hearing granted by Supreme Court of California, October 31, 1946, *Id.*

Amendment. That clause is, of course, not a prohibition on legislative classification. Within limits, classifications are the proper province of the legislatures of the States; the limits are that any legislative classification must be based upon substantial differences having a reasonable relation to the object dealt with and the public purpose sought to be achieved. *Atchison, T. & S. F. R.R.* v. *Matthews*, 174 U. S. 96, 104-105; *Southern Ry.* v. *Greene*, 216 U. S. 400; *Frost* v. *Corporation Commission*, 278 U. S. 515; *Smith* v. *Cahoon*, 283 U. S. 553, 566-567; *Old Dearborn Co.* v. *Seagram Corp.*, 299 U. S. 183.

Here, however, we do not start with the usual presumption in favor of legislative classification. This Court has repeatedly held that in cases involving civil liberties a much more rigorous test will be applied to state action than in cases involving the normal regulation of ordinary commercial transactions. *Thomas* v. *Collins*, 323 U. S. 516, 527, 529-532; *Schneider* v. *Irvington*, 308 U. S. 147, 161; *Thornhill* v. *Alabama*, 310 U. S. 88, 95-96. An intrusion by a state in this domain can be upheld "only if grave and impending public danger requires this". *Thomas* v. *Collins*, *supra*, at p. 532. In intent, and in effect on the lives of aliens of Japanese origin, its denial to them of a fundamental right normally open to all—to till the soil—is indistinguishable from the other state legislation which has been stricken down by this Court. The specific refusal of the court below to apply this test in evaluating the Alien Land Law (R. 116-117) is not only error, but a tacit admission that the law will not stand such a test.

Indeed the presumption—and it is a strong presumption—is against any "race" legislation. Race is a "neutral fact—constitutionally an irrelevance". *Edwards* v. *California*, 314 U. S. 160, 185. This Court stated in *Korematsu* v. *United States*, 323 U. S. 214, 216:

> "It should be noted, to begin with, that all legal restrictions which curtail the civil rights of a single racial group are immediately suspect. * * * Pressing public necessity may sometimes justify the existence of such restriction; racial antagonism never can."

See also *United States* v. *Carolene Products Co.*, 304 U. S. 144, 152; *Steele* v. *Louisville & N. Ry.*, 323 U. S. 192.

This is such a statute. The statute was originally passed to restrict the rights of one racial group. The purpose of the statute has been admitted to be solely anti-Japanese by both the Supreme Court of California and its governor. Its enforcement—indeed, even its non-enforcement—has been solely anti-Japanese. For all practical purposes, only the Japanese are now affected by it.

Under those circumstances, it makes no difference whether the "clear and present danger" rule or the "reasonable classification" rule be applied. The law meets neither test.[26] Compare *Buchanan* v. *Warley*, 245 U. S. 60, in which this Court struck down a city ordinance limiting the rights of Negroes to own land. See also *Harman* v. *Tyler*, 273 U. S. 668; *Richmond* v. *Deans*, 281 U. S. 704.

The use of the term "aliens ineligible to citizenship" is merely a veil which this Court will put aside. In 1880, California enacted a statute which prohibited fishing by "aliens incapable of becoming electors of this state" (Cal. Stats. 1880, p. 123). A Federal circuit court had no difficulty in determining its true meaning—unlawful discrimination against the Chinese. In re *Ah Chong*, 2 Fed. 733 (C. C. D. Calif. 1880). It stated (2 Fed. at p. 737):

> "It is obvious, * * * considered in connection with the public history of the times, that the act relating to fishing in question was not passed in pursuance of any public policy relating to the fisheries of the state as an end to be attained, but simply as a means of carrying out its policy of excluding the Chinese from the state, contrary to the provisions of the treaty."

This Court had before it a similar problem in *Yu Cong Eng* v. *Trinidad*, 271 U. S. 500. A Philippine statute for-

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[26] Some of the arguments heretofore advanced in favor of the law are more appropriately considered in connection with the analysis of the prior decisions of this Court, and have consequently been taken up in Point III, *infra*.

bad "any person" to keep his business accounts in any language other than English, Spanish or a local dialect. The Court, noting the origins and background of the act, stated (271 U. S. at p. 514):

> "Nor is there any doubt that the Act, as a fiscal measure, was chiefly directed against the Chinese merchants. The discussion over its repeal in the Philippine Legislature leaves no doubt on this point. So far as the other merchants in the Islands are concerned, its results would be negligible and would operate without especial burden on other classes of foreign residents."

Moreover, on the history of its enforcement, as well as its background, the case is parallel to *Yick Wo* v. *Hopkins*, 118 U. S. 356. Again, a San Francisco ordinance did not in terms apply only to a single race, yet under it only Chinese were denied licenses. The Court stated (118 U. S. at p. 374):

> "The fact of this discrimination is admitted. No reason for it is shown, and the conclusion cannot be resisted, that no reason for it exists except hostility to the race and nationality to which the petitioners belong, and which in the eye of the law is not justified. The discrimination is, therefore, illegal, and the public administration which enforces it is a denial of the equal protection of the laws and a violation of the Fourteenth Amendment of the Constitution."

See also *Hill* v. *Texas*, 316 U. S. 400; *Ho Ah Kow* v. *Nunan*, 12 Fed. Cas. 252 (C. C. D. Cal. 1879).

The question, in each case, was that stated in *Holden* v. *Hardy*, 169 U. S. 366, 398: "whether the legislature has adopted the statute in exercise of a reasonable discretion, or whether its action be a mere excuse for an unjust discrimination, or the oppression, or spoliation of a particular class." The answer, here, can not be in doubt. The words of Mr. Justice Field, in invalidating the notorious "queue" ordinance of San Francisco are apposite. Faced with an ordinance which, ostensibly as a health measure, required that "every male person" imprisoned in the county jail

should have his hair clipped, and recognizing that it was aimed only at the Chinese, who would be disgraced by the loss of their queues, he said (*Ho Ah Kow* v. *Nunan*, 12 Fed. Cas. 252, 255 (C. C. D. Cal. 1879):

> "When we take our seats on the bench we are not struck with blindness, and forbidden to know as judges what we see as men; and where an ordinance, though general in its terms, only operates upon a special race, sect or class, it being universally understood that it is to be enforced only against that race, sect or class, we may justly conclude that it was the intention of the body adopting it that it should only have such operation, and treat it accordingly."

No one—apparently not even the State of California—would contend that a statute which was *in terms* directed solely against alien Japanese could stand. *Yick Wo* v. *Hopkins*, 118 U. S. 356, 374. *Cf. Chy Lung* v. *Freeman*, 92 U. S. 275; In re *Parrott*, 1 Fed. 481 (C. C. D. Cal. 1880); In re *Quong Woo*, 13 Fed. 229 (C. C. D. Cal. 1882); In re *Tie Loy*, 26 Fed. 611 (C. C. D. Cal. 1886); In re *Lee Sing*, 43 Fed. 359 (C. C. D. Cal. 1890); In re *Ah Fong*, 1 Fed. Cas. 213 (C. C. D. Cal. 1874). This Court itself has said that the Fourteenth Amendment "nullified sophisticated as well as simple-minded modes of discrimination." *Lane* v. *Wilson*, 307 U. S. 268, 275. Yet it is plain that the "alien ineligible to citizenship" is merely a circumlocution and means no more than that in this law. As recently as 1943 the California Legislature provided a graphic example in enacting a statute discriminating against Japanese aliens by name in connection with fishery licenses. Cal. Stats. 1943, c. 1100. The matter was considered further, and in 1945 the California Senate Committee on Japanese Resettlement reported that there was "danger of the present statute being declared unconstitutional, on the grounds of discrimination, since it is directed against alien Japanese". The Committee therefore recommended that the constitutional question could "probably be eliminated by an amendment which has been

proposed to the bill which would make it apply to *any alien who is ineligible to citizenship*". (Italics supplied.) Report of May 1, 1945, pp. 5, 6. The law was so amended. Cal. Stats. 1945, c. 181. Could there be any clearer proof of what "alien ineligible to citizenship" means in California?

Moreover, as we have seen above, not only is the statute anti-Japanese in purpose, but it has been anti-Japanese in operation. Apart from all other considerations, that would be enough to seal its doom. Where over a period of 12 years there have been 59 escheat cases filed under the law, and *every one of them* is against a Japanese, the case falls squarely within the doctrine of *Yick Wo* v. *Hopkins*, 118 U. S. 356, and *Hill* v. *Texas*, 316 U. S. 400.

The State has attempted (Brief in Opposition, p. 18) to avoid the force of this argument by asserting that the Japanese are the only ones against whom escheat actions are brought because "they constitute the offenders". One would scarcely expect anything else when the law was deliberately aimed at the Japanese. However, the argument moves the State only to the other horn of the dilemma. If they *are* the only "offenders", then in truth the law might as well read "alien Japanese" instead of "aliens ineligible to citizenship", and its unconstitutionality would be no longer open to question.

We do not regard the State's suggestion as an argument in favor of the law; rather, it is a confession of its racist, anti-Japanese, unconstitutional characteristics.

III.

THE PRIOR DECISIONS OF THIS COURT DO NOT CONTROL AND SHOULD EITHER BE OVERRULED OR DECLARED TO BE NO LONGER APPLICABLE.

This Court has never passed upon the issue raised in Point I above—the rights of an American citizen such as Fred Oyama, to receive a gift of land from his Japanese alien parents. That question has never before been presented to this Court.

The issue raised in Point II, however, as to both Fred Oyama and Kajiro Oyama—the fundamental issue as to the constitutionality of the Alien Land Law—is not new in this Court. In fact, both the court below and the State of California seek to justify the discrimination inherent in the law by reference to a series of opinions by Mr. Justice Butler in 1923, in which the constitutionality of the law was sustained. *Porterfield* v. *Webb*, 263 U. S. 225; *Webb* v. *O'Brien*, 263 U. S. 313; *Frick* v. *Webb*, 263 U. S. 326. Each of these cases, which involved various aspects of the California law, was decided in large part on the authority of *Terrace* v. *Thompson*, 263 U. S. 197. The latter case, which was the only one of the four in which Mr. Justice Butler discussed the constitutional issue at length, involved a different statute of the State of Washington. That statute prohibited the holding of any right to or benefit in land by all aliens except those who in good faith declared their intention to become United States citizens.[27] Mr. Justice Butler passed over the contention that the state discriminated arbitrarily against one of the defendants who was of Japanese origin because of his race and emphasized that the adoption by the state of a classification for purposes of land ownership which distinguished between aliens on the basis of eligibility to citizenship was proper.

Since Mr. Justice Butler passed almost without comment the differences between the Washington and California statutes, it is impossible to say precisely what rationale was used to justify the California law in the 1923 cases. In the *Terrace* case, however, the opinion refers, first, to the federal naturalization laws. 263 U. S. at p. 220. It then accepts and quotes the opinion of the District Court that one who could not become a citizen "lacks an interest in, and the power to effectually work for the welfare of, the state", and that thus the "state may rightfully deny him the right

[27] Washington has, in other words, essentially the common-law rule, liberalized only to the extent of treating a good faith declarant the same as a citizen. See McGovney, *supra*, note 8, pp. 43-45.

to own and lease real estate within its boundaries" since, otherwise, "it is within the realm of possibility that every foot of land within the state might pass to the ownership or possession of a non-citizen". 263 U. S. at pp. 220-221.[28]

Whatever may have been the situation in 1923, the plain fact of the matter is that the justification is now wholly unconvincing.

1. Mr. Justice Butler phrased the first attempt at justification as follows (263 U. S. at p. 220):

> "The rule established by Congress on this subject, in and of itself, furnishes a reasonable basis for classification in a state law withholding from aliens the privilege of land ownership as defined in the act."

No one will deny that the federal law furnishes a classification. There is a class of aliens ineligible to citizenship and generally identifiable as such, albeit in this instance the "ineligible alien" language is but a subterfuge for "Japanese alien". But the mere existence of distinguishing characteristics—whether they be of the Japanese class within the class or of the purported broader class of "ineligible aliens"—does not of itself support a discrimination as respects the right to own agricultural land. People below the age of 21 are a definite class, so are women, so are blind people. Each of these classes, and innumerable other groups, have been set apart in a classification by themselves in some federal statute. The issue is not as to the *existence* of the class; it is solely as to whether, under the circumstances, the class presents a "clear and present danger", or even a reasonable relation to the object sought to be achieved.

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[28] Mr. Justice Butler did not quote the remainder of the paragraph in the opinion of the District Court (274 Fed. at p. 850): "Such a result would leave the foundation of the state but a pale shadow, and the structure erected thereon but a tower of Babel, from which the tenants in possession might, when the shock of war came, bow themselves out, because they were not bound as citizens to defend the house in which they lodged."

No one, certainly, would say that *any* classification which Congress might adopt for *any* purpose could be used as the measure of the right to own agricultural land in California. Each classification must stand on its own merits. There is no basis whatever, so far as we can see, for a conclusion that the authority of a state to discriminate in the ownership of land within its borders is identical with the specific authority vested in Congress over naturalization under Article I, Section 8. Mr. Justice Butler himself destroyed the basis for his own argument by his statement in the opinion in *Terrace* v. *Thompson*: "Congress is not trammeled, and it may grant or withhold the privilege of naturalization upon any grounds or without any reason, as it sees fit." 263 U. S. at p. 220. The public policy of Congress on a purely political issue as to which its power is plenary furnishes no rational basis on which to sustain a classification denying a group the right to own land. And certainly it cannot be used, as it is here, as a cloak for specific discrimination against the Japanese alone.[29]

2. We find no better justification, however, when we turn to Mr. Justice Butler's second suggestion. It seems to be in two parts: first, that "one who is not a citizen and cannot become one lacks an interest in, and the power to effectively work for the welfare of, the state". A little later in the opinion, he states the same position in somewhat different language: "The quality and allegiance of those who own, occupy and use farm lands within its borders are matters of highest importance to the safety and power of the State itself." The second part of the proposition is, that without the ban "every foot of land within the state might pass to the ownership or possession of non-citizens". *Terrace* v. *Thompson*, *supra*, 263 U. S. at pp. 220-222 (applied with respect to the California law in *Porterfield* v. *Webb*,

[29] Even in the field of naturalization, the racial basis used by Congress has been criticized. See Gordon, *The Racial Barrier to American Citizenship* (1945), 93 U. of Pa. L. Rev. 237; McGovney, *supra*, note 8, pp. 47-48.

supra, 263 U. S. at p. 233, and adopted by the court below in this case, R. 115).[30]

Each of the two parts of the argument is not only unconvincing but meaningless. The fact that a farmer such as Kajiro Oyama, living in this country, devoting his life to the soil and raising children who are privileged to be American citizens, cannot himself exercise this privilege has nothing to do with his character or his loyalty to the United States. He has as much at stake in the economic, social and political fortunes of the state as anyone else. Will he acquire a greater interest in the welfare of the state by being legislated into landlessness? The Court has recently expressed itself on another Japanese alien in very apposite language (Ex parte *Kawato*, 317 U. S. 69, 71):

> "* * * Nothing in this record indicates, and we cannot assume, that he came to America for any purpose different from that which prompted millions of others to seek our shores—a chance to make his home and work in a free country, governed by just laws, which promise equal protection to all who abide by them."

Kajiro Oyama cannot become a citizen not because of anything he has done, but because of an act of Congress. The German alien, the Russian alien, the British alien, may all hold agricultural land in California. There is nothing about the Japanese alien to distinguish him from the others except his race and color. But, as this Court said in Ex parte *Endo*, 323 U. S. 283, 302: "loyalty is a matter of the heart and mind, not of race, creed or color."

No one, we submit, can seriously believe that the fact of eligibility to citizenship can create an automatic presumption of loyalty or of good character where there was neither loyalty nor good character before. On the contrary, one might well suggest that a person who *could* become a citi-

[30] See also Mott v. Cline, 200 Cal. 434, 253 Pac. 718, 724, where the court below stated that the "ownership of the soil by persons morally bound by obligations of citizenship is vital to the political existence of a state."

ven," but has not done so, has shown less interest in the United States than one who is ineligible for reasons beyond his control. Yet in the State's Brief in Opposition (p. 14) we find echoes of the old prejudices which have been almost universally condemned. We are reminded that Japanese carry "the hall-mark of Oriental despotisms"; we are referred to their "lack of assimilation", and their "solidarity", and the suggestion is made that they are "not fitted and suited to work for the success of a republican form of government."

Even were all this true, the relationship to ownership of agricultural land is still *nil*. What can be the purpose of denying a race so characterized this one right? To paraphrase Mr. Justice Butler's point, in what respect is the "safety and power" of the state affected by the allegiance of some small portion of the owners of farm land?[31] If the safety of the state is the criterion—and if we are willing to make the assumption that the Federal Government lacks adequate powers to defend the United States[32]—the effect is precisely the opposite to that which is intended. The inevitable consequence is to drive the Japanese aliens to the urban areas, where under conditions of modern warfare the danger of espionage and sabotage is far greater than it would be were the Japanese aliens located in rural communities.

But, in fact, the charges are not true. Mr. Justice Murphy was right in saying that every charge "relative to

[31] Perhaps Mr. Justice Butler had in mind the ancient rationalization by Lord Coke, *supra*, p. 32, which had references to feudal concepts and feudal conditions, and was out of date by 1400. Military tenure was formally abolished in 1660, 12 Car. II, c. 24. But even if we have an echo of the Middle Ages, it is apparent that it does not warrant discrimination *among* aliens as respects the right to own land.

[32] The experience of the last war demonstrated that it is not impotent, and that no help from anti-Japanese land laws is necessary. Hirabayashi v. United States, 320 U. S. 81; Korematsu v. United States, 323 U. S. 214.

race, religion, culture, geographical location and legal and economic status has been substantially discredited by independent studies made by experts in these matters." *Korematsu v. United States*, 323 U. S. 214, 237.[33] It is reported that no case of espionage or sabotage by any person of Japanese ancestry domiciled in the United States—or in Hawaii, for that matter—was uncovered during the entire course of the war.[34] Loyalty and allegiance, just as in the case of other aliens, was a matter of individual feeling, not of racial characteristics.[35] Mr. Ferguson (*supra*, note 8) states (p. 84):

> "Thousands of the aliens in the relocation centers streamed out to plant and harvest sugar beets and other vital war crops. Many others found maintenance jobs on railroads, employment at ordnance depots, positions in military language schools and war agencies, and other war-connected service. Probably no better proof of the assimilation of the Japanese exists than the record of the 23,000 Japanese-American lads, the sons of the aliens so vilified by the race-baiters, who fought brilliantly in both the European and Pacific war theaters. The simple truth is that the vast majority of the Japanese in this country are bound to us by the most powerful economic, family and personal considerations. Discrimination against them in the ownership

[33] See Strong, *The Second Generation Japanese Problem* (1934); McWilliams, *Prejudice*, (1944); Millis, *The Japanese Problem in the United States* (1915) 148, 215; W. R. A. *Myths and Facts About the Japanese Americans* (1945); Ferguson, *supra*, note 8, pp. 79-84.

[34] Ferguson, *supra*, note 8, pp. 83-84. Fleet Admiral Nimitz recently stated: "Before World War II, I entertained some doubt as to the loyalty of American citizens of Japanese ancestry in the event of war with Japan. From my observations during World War II, I no longer have that doubt. • • • I know of no cases of sabotage or subversive activities during my entire service as Commander in Chief of the Pacific Fleet and Pacific Ocean areas." House Committee on Public Lands, *Hearings on Statehood for Hawaii*, 80th Cong., 1st Sess., pp. 63-65 (1947).

[35] H. Rep. No. 2124, *supra*, note 8, pp. 142-151.

of land on the basis of inability to be assimilated or because of closer ties to the motherland than other groups of immigrants is unwarranted."[36]

The second part of Mr. Justice Butler's syllogism—that all the land in the state might be owned by ineligible aliens—is, if anything, even more palpably unreasonable. Again, one is reminded of Lord Coke's rationalization of the early prohibition against alien landholding in England—that if aliens could own land, there might not be enough freeholders left in England to supply the juries. Pp. 32-33, *supra*. In 1910, the California Japanese population was 41,356, of whom 4,502 were American citizens. In 1920, the total had risen to 71,952, but the percentage of citizens had risen to

[36] See also President Truman, to the 442d Combat Team, July 15, 1946, quoted in *People in Motion*, *supra*, note 15, p. 19. The petition of the American Legion, the Veterans of Foreign Wars, the Disabled American Veterans, the United Spanish War Veterans, and later the A. F. of L. and the C. I. O., to the Legislature of Utah to repeal the Alien Land Law of that state, said: "The Alien Land Law denies the right to 'acquire, possess or transfer real property" to those alien Japanese who though actual citizens of enemy Japan contributed so much to our victory over that enemy in counter-intelligence, as instructors in the Army and Navy Language Schools, on the production line of war industries, and on the farm." *Pacific Citizen*, Nov. 30, 1946, p. 1; *People in Motion*, p. 22. The law was repealed. Secretary of Interior Krug has testified that "these particular American citizens and law-abiding aliens have borne with patience and undefeated loyalty the unique burdens which this government has thrown upon them." *Pacific Citizen*, May 4, 1946, p. 1. Edward J. Ennis, Director of the Alien Enemy Control Unit in the United States Department of Justice during the war, testified: "I know that the overwhelming majority of the Japanese alien population were law abiding residents. I have no doubt that most of them would have been naturalized citizens if our laws had permitted their naturalization. I know personally of many cases in which they not only did not interfere with, but indeed urged their United States born children to join our armed forces and to fight the enemy—even the Japanese enemy." *Hearings on H. R. 2933*, 80th Cong., 1st Sess., April 23, 1947, p. 87.

about one-third.[37] In the latter year, the percentage of California farms controlled by Japanese aliens and citizens alike was but 4.4, and they comprised only 1.2 percent of the state's agricultural land.[38]

From 1920 to 1940, the total Japanese population in California increased from 71,952 to 93,717, while the percentage of American citizens increased to two-thirds.[39] But during this period the percentage of Japanese controlled farms—again aliens *and* citizens—decreased from 4.4 to 3.9 percent, and the acreage from 1.2 to 0.7 percent.[40]

In 1940, the census reports show 33,569 Japanese aliens in California. The number is now, of course, materially less. They are the persons who entered before 1924. In 1940 all but 2760 were 35 years of age or older,[41] and more than half were over 50 years of age. Seven years have now passed, those age figures have now risen to 42 and 57, and death is beginning to take a more rapid toll. Even between 1920 and 1940, the number of Japanese aliens decreased 42 percent.[42] Moreover, the same census reports show that a large number of the Japanese aliens are engaged in non-agricultural work,[43] and are, like the Chinese, presumably no "menace" in the sense in which Mr. Justice Butler used the term.

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[37] Ichihashi, *supra*, note 8, p. 320; Ferguson, *supra*, note 8, p. 77.

[38] H. Rep. No. 2124, *supra*, note 8, p. 122.

[39] *Id.* at pp. 91, 96.

[40] *Id.* at p. 122. See also *Japanese Farm Holdings on the Pacific Coast* (U. S. Dept. of Agriculture, 1944) p. 9.

[41] 1940 Census, *Characteristics of the Non-White Population*, Table 33.

[42] 1940 Census, II *Characteristics of the Population*, Pt. 1, p. 21.

[43] 1940 Census, *Characteristics of the Non-White Population*, Table 38. Compare *Id.*, Table 44, which shows that a far greater proportion of Filipinos are engaged in agriculture work than Japanese aliens.

Finally, the results of the war-time evacuation cannot be ignored. The War Relocation Authority has recently estimated that no more than 60 percent of the evacuees have returned to their former homes, and the remaining 40 percent have remained east of the evacuation boundary.[44] Assuming that the tendency of older people would be to return to their former homes,[45] and that the proportion of Japanese aliens who returned to California was larger than the proportion for all persons of Japanese extraction, the total for California now cannot be more than 25,000.[46]

Even on the 1940 figures, the proportion of Japanese aliens is utterly insignificant. The 33,509 Japanese aliens, as compared with the total 1940 California population of 6,907,387, are only about one-half of one percent. Compared with the total of all aliens in California, they are only about 6 percent.[47] Even were we to grant the premise that "ownership of the soil by persons morally bound by obligations of citizenship is vital to the political existence of the state", it cannot justify banning this mere handful of aliens of one race from ownership of land.

On neither branch of Mr. Justice Butler's second argument does he carry conviction. Neither the characteristics nor the numbers of ineligible aliens—Japanese—bear out his justification of the law. Nor, as we have seen, is his first argument adequate. We submit, therefore, that the decisions of 1923 which held the California Alien Land Law to be constitutional were and are unsound, and should now be overruled.

In justice, however, it must also be conceded that conditions have now changed. Perhaps one can fairly say that the 1923 decisions are as anachronistic as they are errone-

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[44] *People in Motion*, *supra*, note 15, p. 12.

[45] *Id.*, pp. 13-15.

[46] *Cf.* McGovney, *supra*, note 8, pp. 14-15.

[47] Rep. Atty. Gen. 259 (1941). California has more aliens than any other state except New York.

ous. Among the more obvious differences is, of course, the fact that the class of "ineligible aliens" has shrunk until now it is practically synonymous with "Japanese", due to the successive changes in the naturalization laws by Congress since 1923. See pp. 31-32, *supra*. Again, there is the almost exclusively anti-Japanese record of enforcement, which was not so apparent in 1923. The horrendous possibilities of all of California being owned by ineligible aliens, envisioned in 1923, can now be safely dismissed. Moreover, in 1923, the facts as to the origins and history of the law were not, unfortunately, brought to the attention of the Court. This Court, on other occasions, has found different constitutional answers in the light of changing facts. *Nashville, C. & St. L. Ry.* v. *Walters*, 294 U. S. 405, 415; *Chastleton Corp.* v. *Sinclair*, 264 U. S. 543, 547; *Dahnke-Walker Milling Co.* v. *Bondurant*, 257 U. S. 282, 289. As the New York Court of Appeals has expressed it, in reaching a constitutional result opposite to that it had held eight years before: "There is no reason why we should be reluctant to give effect to new and additional knowledge upon such a subject as this even if it did lead us to take a different view of such a vastly important question * * *." *People* v. *Schweinler Press*, 214 N. Y. 395, 412, 108 N. E. 639, 644 (1915).

But even more significant than any of these factors is the instrusion of a new factor which completely destroys the principal basis upon which Mr. Justice Butler relied—that the "safety" of the state was at stake, and could be protected by the device of denying these aliens the right to own lands. See pp. 42-48, *supra*. Not only has the fact belied the fear, as shown by the experience of the last war, but that field has been completely and effectively occupied by the Federal Government.

The California Alien Land Law must, in the nature of things, always have been perilously close to an invasion of a federal field. Not only did it nullify, *pro tanto*, a federal immigration policy (see *Estate of Yano*, *supra*, pp. 24, 36), but it dealt of necessity in an area of highly sensitive inter-

national relations. In *Hines* v. *Davidowitz*, 312 U. S. 52, 64-66, this Court said:

> "One of the most important and delicate of all international relationships, recognized immemorially as a responsibility of government, has to do with the protection of the just rights of a country's own nationals when those nationals are in another country. Experience has shown that international controversies of the gravest moment, sometimes even leading to war, may arise from real or imagined wrongs to another's subjects inflicted, or permitted, by a government.
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> * * * * * * * * *
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> "Legal imposition of distinct, unusual and extraordinary burdens and obligations upon aliens * * * thus bears an inseparable relationship to the welfare and tranquility of all the states, and not merely to the welfare and tranquility of one."

The question of Mr. Justice Miller in *Chy Lung* v. *Freeman*, 92 U. S. 275, 279, is peculiarly appropriate: "If [the United States] should get into a difficulty which would lead to a war, or to suspension of intercourse, would California alone suffer, or all the Union?".[48]

In more recent years, however, the complete absence of any basis for state action in the field of alien control in the interest of safety has become so plain as to make the statements in *Terrace* v. *Thompson* obsolete. Aliens have been registered by the Federal Government. *Hines* v. *Davidowitz*, 312 U. S. 52. Alien enemies have been brought fully within Federal control, with imprisonment of those con-

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[48] We have seen above the fact that Federal officials, including the President and the Secretary of State, did in fact intervene in the California legislature in an attempt to prevent the passage of the law, first successfully and later not. Pp. 25-26, *supra*. And, in fact, there were immediate international repercussions caused by its passage. U. S. Department of State, *American-Japanese Discussions Relating to Land Tenure Law of California*, (1919); Millis, *The Japanese Problem in the United States*, pp. 281, *et seq.* (1915); Ichihashi, *supra*, note 8, Ch. 17; H. Rep. No. 2124, *supra*, note 8, pp. 85, *et seq.*

sidered dangerous, and sequestration of all alien enemy property. An Alien Enemy Control Unit was set up in the Department of Justice. Full measures were taken to prevent any danger to the safety of any state by any non-citizens within our borders.

Indeed, with respect to the aliens from which California assumes to secure itself by this law—the Japanese—the Federal Government assumed complete control. Not only were the general Federal safeguards applicable, but the Federal Government completely eliminated even the possibility of danger to California by physically removing *all* Japanese aliens—and their citizen descendants—from California, and depriving them of all contact with the state and its activities by detaining them in camps. *Korematsu* v. *United States*, 323 U. S. 214; Ex parte *Endo*, 323 U. S. 283. Every aspect of their economic and even of their personal life was controlled by the Federal Government. Indeed, we can go farther: the Federal Government is also, and inevitably, concerned with the relocation of the aliens whom it thus removed from California. In that respect, the Alien Land Law is a direct interference with Federal power. The Department of the Interior, charged with responsibility for that relocation purpose, has reported within the past month (*People in Motion, supra*, note 15, p. 46):

> "The present effect of the Alien Land Law [of California] on that adjustment is large, since a considerable proportion of these people have been and remain dependent upon agriculture for their livelihood. In the preparation of this report, no other problem facing the Japanese American people was found to represent so serious an obstacle to adjustment." [49]

[49] The ultimate question, the Court said in the *Hines* case, is whether the state law was "an obstacle to the accomplishment of the full purposes and objectives of Congress." 312 U. S. at p. 67. Note also that in determining that question, the factors which the court there deemed relevant are also present here. The state legislation there in question concerned aliens, "* * * a field which affects international relations, the one aspect of our government

No matter how the State chooses to argue, the answer, we think, must be the same. If, on the one hand, the State recognizes that it can no longer seek to justify the law on the basis of the "safety" of the State, then the 1923 decisions lose their only claim to validity, and the law must fail. If, on the other hand, the State chooses to continue to rely on the discredited rationalization of state safety advanced by the District Court in *Terrace* v. *Thompson*, and adopted by Mr. Justice Butler, it must perforce admit that California has invaded deeply a field which not only should be, but in fact is, the exclusive concern of the Federal Government. That being so, the state law must also fail. *Hines* v. *Davidowitz, supra; Cloverleaf Butter Co.* v. *Patterson*, 315 U. S. 148; *cf. Allen Bradley Local No. 1111* v. *Wisconsin Employment Relations Board*, 315 U. S. 740. See Note, 60 Harv. L. Rev. 262 (1946).

Finally, we should add that the United States is concerned in still another fashion. By the United Nations Charter—having the force of a treaty—the United States has agreed, in Article 55c, to foster—

> "universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language or religion."

And Article 56 continues:

> "All members pledge themselves to take joint and separate action in cooperation with the Organization for the achievement of the purposes set forth in Article 55."

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that from the first has been most generally conceded imperatively to demand broad national authority. Any concurrent state power that may exist is restricted to the narrowest of limits; the state's power here is not bottomed on the same broad base as its power to tax. And it is also of importance that this legislation deals with the rights, liberties, and personal freedoms of human beings, and is in an entirely different category from state tax statutes or state pure food laws regulating the labels on cans." 312 U. S. at p. 68.

The Charter adds one more compelling reason to those already stated in the *Hines* case for exclusive Federal action. A discriminatory law denying Japanese aliens, solely because of their race, the rights vouchsafed to all others, aliens and citizens, is peculiarly a law which flaunts, for all the world to see, a conflict with the Charter. *Cf.* Re *Drummond Wren* [1945] O. R. 788, in which a Canadian court held a restrictive covenant against Jews void as against public policy, relying in part on the Charter.

IV.

THE DECISION OF THE COURT BELOW, IN DENYING PETITIONERS THE PROTECTION OF THE CALIFORNIA STATUTE OF LIMITATIONS, DENIES THEM DUE PROCESS OF LAW.

We have already pointed out that for a decade or more before Pearl Harbor, due to the exigencies of international relations, the Alien Land Law had not been enforced. Not a single escheat action had been begun against a Japanese in the entire period from 1930 to 1942. Consequently, when the sudden surge of anti-Japanese propaganda that accompanied the war and the evacuation program burst in full flower in the 1943-1945 period, the State found a legal barrier against its revised campaign—the statute of limitations. Its method of solution, again in disregard of constitutional rights, is but a further evidence of the general pattern.

A brief summary of the California law will make the point clear.

Section 312 of the Code of Civil Procedure of California provides:

> "Civil actions, without exception, can only be commenced within the periods prescribed in this title, after the cause of action shall have accrued, unless where, in special cases, a different limitation is prescribed by statute."

A later section of the Code makes clear that "action" is not used in any restrictive fashion. Section 363 states:

> "The word 'action' as used in this title is to be construed, whenever it is necessary so to do, as including a special proceeding of a civil nature."

Various periods of limitation are set out for various types of civil actions. The longest period of limitations is that contained in Section 315. It provides:

> "The people of this state will not sue any person for or in respect to any real property, or the issues or profits thereof, by reason of the right or title of the people to the same, unless—
>
> "1. Such right or title shall have accrued within ten years before any action or other proceeding for the same is commenced; or,
>
> "2. The people, or those from whom they claim, shall have received the rents and profits of such real property, or some part thereof, within the space of ten years."[50]

Petitioners relied upon the statute of limitations with respect at least to the property transferred to Fred Oyama in 1934, more than ten years prior to the date of institution of this suit. The court below, however, managed the extraordinary conclusion that no statute of limitations applied. The court stated (R. 119):

> "* * * the 'different limitation' mentioned in section 312 clearly should be construed to include no limitation as to an action commenced under a statute which specifies that time shall not bar the right to invoke its provisions."

The Alien Land Law, however, did not, until 1945 "specify that time shall not bar the right to invoke its provi-

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[50] The Code also applies a one-year statute of limitations to "An action upon a statute * * * for a forfeiture or penalty to the people of this state" (Section 340(2), and a three-year limitation to actions for relief on the ground of fraud (Section 338(4)).

sions." Until then, the laws of California, which of course must be read as an integrated body of statutes, had only one provision which bore on this point—that contained in Section 315: "The people of this state will not sue any person for or in respect to any real property * * * by reason of the right or title of the people to the same", unless the right or title accrues within ten years. Fred Oyama had been the record owner of one of the two tracts here involved—that which he was given in 1934—for more than ten years before 1945, when this action was begun, and when the California legislators purported to add a *different* period of limitations for the land law.

The new provision, which was added to the legislation in 1945 provided:

> "No statute of limitation shall apply or operate as a bar to any escheat action or proceeding now pending or hereafter commenced pursuant to the provisions"

of the Alien Land Law. The 1945 Act further stated, "The amendment made by this act does not constitute a change in, but is declaratory of, the pre-existing law."

The court below, it is true, said that even prior to 1945 the Alien Land Law was "inconsistent with a statute of limitations". It may be doubted whether under the provisions above quoted any such construction is even within the realm of judicial interpretation. In any event, where a right is asserted under the Federal Constitution, it is not only within the power of this Court, but it is its obvious obligation, to determine independently whether any constitutional right has been denied. *Altantic Coast Line R. R.* v. *Thompson*, No. 385 (Oct. Term, 1946, decided June 23, 1947); *Hawks* v. *Hamill*, 288 U. S. 52, 59; *Coombes* v. *Getz*, 285 U. S. 434, 441; *Gelpke* v. *Dubuque*, 1 Wall. 175, 206-207.

If, upon a true construction of the Alien Land Law and the Code of Civil Procedure, taken together, there was, before 1945, a 10-year statute of limitations, it is submitted

that the lifting of the bar of the statute to deprive Fred Oyama, or Kajiro Oyama, of land which they had prior to the passage of the 1945 Act, is unconstitutional. *Stewart* v. *Keyes*, 295 U. S. 403; *Campbell* v. *Holt*, 115 U. S. 620, *Chase Securities Co.* v. *Donaldson*, 324 U. S. 304. In the *Stewart* case the Court stated (p. 417):

> "We are of opinion that so much of the section as purports to free from any bar of the statutes of limitation a cause of action such as is here presented, notwithstanding the full period of limitation had run prior to the act's approval, falls nothing short of an attempt arbitrarily to take property from one having a perfect title and to subject it to an extinguished claim of another.
>
> "As respects suits to recover real or personal property where the right of action has been barred by a statute of limitations and a later act has attempted to repeal or remove the bar after it became complete, the rule sustained by reason and preponderant authority is that the removing act cannot be given effect consistently with constitutional provisions forbidding a deprivation of property without due process of law. 'The reason is,' as this Court has said, 'that, by the law in existence before the repealing act, the property had become the defendant's. Both the legal title and the real ownership had become vested in him, and to give the act the effect of transferring this title to plaintiff, would be to deprive him of his property without due process of law.'"

That, we submit, is the situation here.

CONCLUSION

Wherefore, the decision below should be reversed.

Respectfully submitted,

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September, 1947.

APPENDIX "A"

The California Alien Land Law (Alien Property Initiative Act of 1920, as amended, Stats. (1921) p. lxxxiii, in effect, December 9, 1920; amended by Stats. (1923) c. 441, p. 1020; Stats. (1927) c. 528, p. 880; Stats. (1943) c. 1003, p. 2917, c. 1059, p. 2999; Stats. (1945) c. 1129, p. 2114, c. 1136, p. 2177; Deering's Gen. Laws, Act 267) provides in part as follows:

"Sec. 1. All aliens, eligible to citizenship under the laws of the United States may acquire, possess, enjoy, use, cultivate, occupy, transfer, transmit and inherit real property, or any interest therein, in this state, and have in whole or in part the beneficial use thereof, in the same manner and to the same extent as citizens of the United States except as otherwise provided by the laws of this state. (Amended by Stats. 1923, p. 1021.)

"Sec. 2. All aliens other than those mentioned in section one of this act may acquire, possess, enjoy, use, cultivate, occupy and transfer real property, or any interest therein, in this state, and have in whole or in part the beneficial use thereof, in the manner and to the extent, and for the purposes prescribed by any treaty now existing between the government of the United States and the nation or country of which such alien is a citizen or subject, and not otherwise. (Amended by Stats. 1923, p. 1021.)

* * * *

"Sec. 4. Whenever any alien mentioned in Section 2 hereof is appointed by any court as a guardian of his native-born minor child or children, or as a guardian of any other person or persons, it shall be unlawful for such said alien guardian to farm, operate or manage any land or lands held by such guardianship estate, except solely for the use and benefit of the ward or wards of said estate, or to enjoy, possess or have, in whole or in part, the beneficial use of any such said land or lands so held or possessed or which belong to any such said guardianship estate, nor shall said alien guardian have or enjoy or receive directly or indirectly the beneficial use of such said lands or the proceeds received from the sale of any crops produced, grown or raised thereon, it being the intent of this section that no alien mentioned in Section 2 hereof shall by any guardian-

ship proceedings whatsoever evade or violate or seek to evade or violate any of the provisions of this statute.

"In all such said guardianship estates, the alien guardian must make every year a report to the court in which said guardianship estate is pending, showing in detail and supported by receipts, all money disbursed, expended and paid out by said guardian, to whom same was paid, for what purpose, and the date of such said disbursement or payment. Also all money received, from whom received, for what purpose received, and the date of the receipt thereof. A copy of said report shall be served by the guardian on the district attorney of the county, and said guardian shall give said district attorney notice of the hearing of said report. Failure on the part of the said alien guardian so to make such report, or serve such copy thereof, or notify such district attorney shall constitute a direct violation hereof, for which said guardian may be prosecuted and punished as set forth in Section 10a of this act.

"Said alien guardian shall include in such report such other matters and items as the court may require, the said alien guardian to be under the absolute jurisdiction and control of the court at all times, and the court may from time to time require said alien guardian to make special reports on all things pertaining to said guardianship estate. The court may also require the ward of any such said guardianship estate to be produced in court whenever said court may deem such procedure necessary and proper for the protection of said guardianship estate.

"The court shall have the power to fix the compensation of the said alien guardian at such amount as the court may determine. The court shall also fix the amount of bond to be given by said alien guardian. The court shall also fix and determine the amount of attorney's fees in all such guardianship matters.

"Whenever any alien guardian shall fail, neglect or refuse to comply with the terms and provisions hereof, he may be removed as guardian of said estate by the court, when deemed to be for the best interests of said estate.

"The court shall require a final account to be filed on behalf of any such guardianship estate at the time the ward or wards shall become 21 years of age. The court may also require such matters to be included in said report as said court may deem to be necessary and proper. No such guardianship estate shall be finally closed until the final report shall have been filed and approved by the court. (As amended by Stats. 1943, Ch. 1059, Secs. 1, 2.)

"Sec. 5. (a) The term 'trustee' as used in this section means any person, company, association or corporation that as guardian, trustee, attorney in fact or agent, or in any other capacity has the title, custody or control of property, or some interest therein, belonging to an alien mentioned in section two hereof, or to the minor child of such alien, if the property is of such a character that such alien is inhibited from acquiring, possessing, enjoying, using, cultivating, occupying, transferring, transmitting or inheriting it.

(b) Annually on or before the thirty-first day of January every such trustee must file in the office of the secretary of state of California and in the office of the county clerk of each county in which any of the property is situated, a verified written report showing:

(1) The property, real or personal, held by him for or on behalf of such alien or minor;

(2) A statement showing the date when each item of such property came into his possession or control;

(3) An itemized account of all such expenditures, investments, rents, issues and profits in respect to the administration and control of such property with particular reference to holdings of corporate stock and leases, cropping contracts and other agreements in respect to land and the handling or sale of products thereof.

(c) Any person, company, association or corporation that violates any provision of this section is guilty of a misdemeanor and shall be punished by a fine not exceeding one thousand dollars or by imprisonment in the county jail not exceeding one year, or by both such fine and imprisonment.

(d) The provisions of this section are cumulative and are not intended to change the jurisdiction or the rules of practice of courts of justice.

* * * *

"Sec. 7. Any real property hereafter acquired in fee in violation of the provisions of this act by any alien mentioned in Section 2 of this act, or by any company, association or corporation mentioned in Section 3 of this act, shall escheat as of the date of such acquiring, to, and become and remain the property of the State of California. (As amended by Stats. 1945, Ch. 1129.)

* * * *

"Sec. 8.5. No statute of limitations shall apply or operate as a bar to any escheat action or proceeding now pending or hereafter commenced pursuant to the provisions of this act. (Added by Stats. 1945, Ch. 1136, Sec. 1.)

(The statute adding this section provides further: "Sec. 2. The amendment made by this act does not constitute a change in, but is declaratory of, the pre-existing law.")

"Sec. 9. Every transfer of real property, or of an interest therein, though colorable in form, shall be void as to the State and the interest thereby conveyed or sought to be conveyed shall escheat to the State as of the date of such transfer, if the property interest involved is of such a character that an alien mentioned in Section 2 hereof is inhibited from acquiring, possessing, enjoying, using, cultivating, occupying, transferring, transmitting or inheriting it, and if the conveyance is made with intent to prevent, evade or avoid escheat as provided for herein.

"A prima facie presumption that the conveyance is made with such intent shall arise upon proof of any of the following group of facts:

"(a) The taking of the property in the name of a person other than the persons mentioned in Section 2 hereof if the consideration is paid or agreed or understood to be paid by an alien mentioned in Section 2 hereof;

"(b) The taking of the property in the name of a company, association or corporation if the memberships or shares of stock therein held by aliens mentioned in Section 2 hereof, together with the memberships or shares of stock held by others but paid for or agreed or understood to be paid for by such aliens, would amount to a majority of the membership or issued capital stock of such company, association or corporation;

"(c) The execution of a mortgage in favor of an alien mentioned in Section 2 hereof if such mortgagee is given possession, control or management of the property.

"In each of the foregoing instances the burden of proof shall be upon the defendant to show that the conveyance was not made with intent to prevent, evade or avoid escheat.

. . . . .

"The enumeration in this section of certain presumptions shall not be so construed as to preclude other presumptions or inferences that reasonably may be made as to the existence of intent to prevent, evade or avoid escheat as provided for herein. (Amended by Stats. 1945, Ch. 1129, Sec. 4)"

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APPENDIX "B"

Civil Escheat Proceedings Instituted by the California Attorney General's Office Under the Alien Land Law

(Compiled from Biennial Reports of the California Attorney General's Office from 1912-14 through 1944-46)

Aliens "ineligible for naturalization"

	Chinese	Indians	Koreans	Japanese	Others	
1912-14						
1914-16	1			1		
1916-18				1		
1918-20				1		
1920-22				7		
1922-24		1		3		
1924-26						
1926-28						
1928-30				1		
1930-32						
1932-34	1					
1934-36						
1936-38						
1938-40						
1940-42						
1942-44				4		
1944-46				55		
Total	2	1	0	73	0	=76

APPENDIX "C"

Cases Involving California Alien Land Law Reported in Official California Reports as of August 19, 1947

Cases Involving Japanese

Escheat cases:

State v. *Tagami*, 195 Cal. 522 (1925)
People v. *Fujita*, 215 Cal. 166 (1932)
People v. *Nakamura*, 125 Cal. App. 268 (1932)
People v. *Oyama*, 29 Adv. Cal. Rep. 157 (the case at bar)
People v. *Ikeda*, 78 ACA 610 (rehearing granted, August 1, 1947)

Non-Escheat cases:

In re *Akado*, 188 Cal. 739 (1922)
In re *Okahara*, 191 Cal. 353 (1923)
People v. *Cockrill*, 62 Cal. App. 22 (1923), *aff'd*, 268 U. S. 258
People v. *Entriken*, 106 Cal. App. 29 (1930)
People v. *Osaki*, 209 Cal. 169 (1930)
Takeuchi v. *Schmuck*, 206 Cal. 782 (1929)
Shiba v. *Chikuda*, 214 Cal. 786 (1932)
Saiki v. *Hammock*, 207 Cal. 90 (1929)
In re *Nose*, 195 Cal. 91 (1924), (appeal dismissed, 273 U. S. 772)
People v. *Morrison*, 218 Cal. 287, *rev'd on other grounds*, 291 U. S. 82
People v. *Morrison*, 125 Cal. App. 282 (appeal dismissed, 288 Cal. 591)
Tetsubumi Yano Estate, 188 Cal. 645 (1922)
Porterfield v. *Webb*, 195 Cal. 71 (1924)
Toshiro v. *Jordan*, 201 Cal. 236, *aff'd*, 278 U. S. 123
Gonzales v. *Ito*, 12 Cal. App. (2d) 124 (1936)
Jones v. *Webb*, 195 Cal. 88 (1924)
Dudley v. *Lowell*, 201 Cal. 376 (1927)
Suwa v. *Johnson*, 54 Cal. App. 119 (1921)
Hart v. *Nagasawa*, 218 Cal. 685 (1933)
Nishi v. *Downing*, 21 Cal. App. (2d) 1 (1937)
Heywood v. *Sooy*, 45 Cal. App. (2d) 423

Cases Involving Other Than Japanese

Escheat cases:

None

Non-Escheat cases:

California Delta Farms, Inc. v. *Chinese American Farms, Inc.*, 204 Cal. 524
California Delta Farms, Inc. v. *Chinese American Farms, Inc.*, 207 Cal. 208 (appeal dismissed, 280 U. S. 520) (Chinese)
Alfafara v. *Fross*, 26 Cal. (2d) 358 (Filipino)
Mott v. *Cline*, 200 Cal. 434 (1927) (Chinese)
Carter v. *Utley*, 195 Cal. 84 (1924) (Indian)
People v. *Singh*, 1 Cal. App. (2d) 729 (Indian)
Babu v. *Peterson*, 4 Cal. (2d) 276 (1935) (Indian)
Jack v. *Wong Shee*, 33 Cal. App. (2d) 702 (Chinese)